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WM. R. STANSBURY
CLERK

IN THE
Supreme Court of the United States

STATE OF MARYLAND

versus

**MORRIS A. SOPER, JUDGE OF THE DISTRICT COURT
OF THE UNITED STATES FOR THE DISTRICT
OF MARYLAND, AND THE DISTRICT COURT OF
THE UNITED STATES FOR THE DISTRICT OF
MARYLAND.**

CASE "B."

**MOTION FOR LEAVE TO FILE PETITION FOR WRIT
OF MANDAMUS, PETITION FOR WRIT OF
MANDAMUS AND EXHIBITS.**

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IN THE
Supreme Court of the United States

IN THE MATTER OF THE APPLICATION OF THE
STATE OF MARYLAND FOR A WRIT OF MAN-
DAMUS DIRECTED TO THE HONORABLE,
MORRIS A. SOPER, JUDGE OF THE DISTRICT
COURT OF THE UNITED STATES FOR THE
DISTRICT OF MARYLAND, AND DIRECTED
ALSO TO SAID COURT.

CASE "B".

MOTION FOR LEAVE TO FILE PETITION FOR
WRIT OF MANDAMUS.

MR. CLERK:

Please file.

THOS. H. ROBINSON,
Attorney General of Maryland,

HERBERT LEVY,
Assistant Attorney General of Maryland,
Attorneys for the State of Maryland.



STATE OF MARYLAND

vs.

MORRIS A. SOPER, JUDGE OF
THE DISTRICT COURT OF
THE UNITED STATES FOR
THE DISTRICT OF MARY-
LAND, AND THE DISTRICT
COURT OF THE UNITED
STATES FOR THE DISTRICT
OF MARYLAND.

IN THE
SUPREME COURT
OF THE
UNITED STATES.

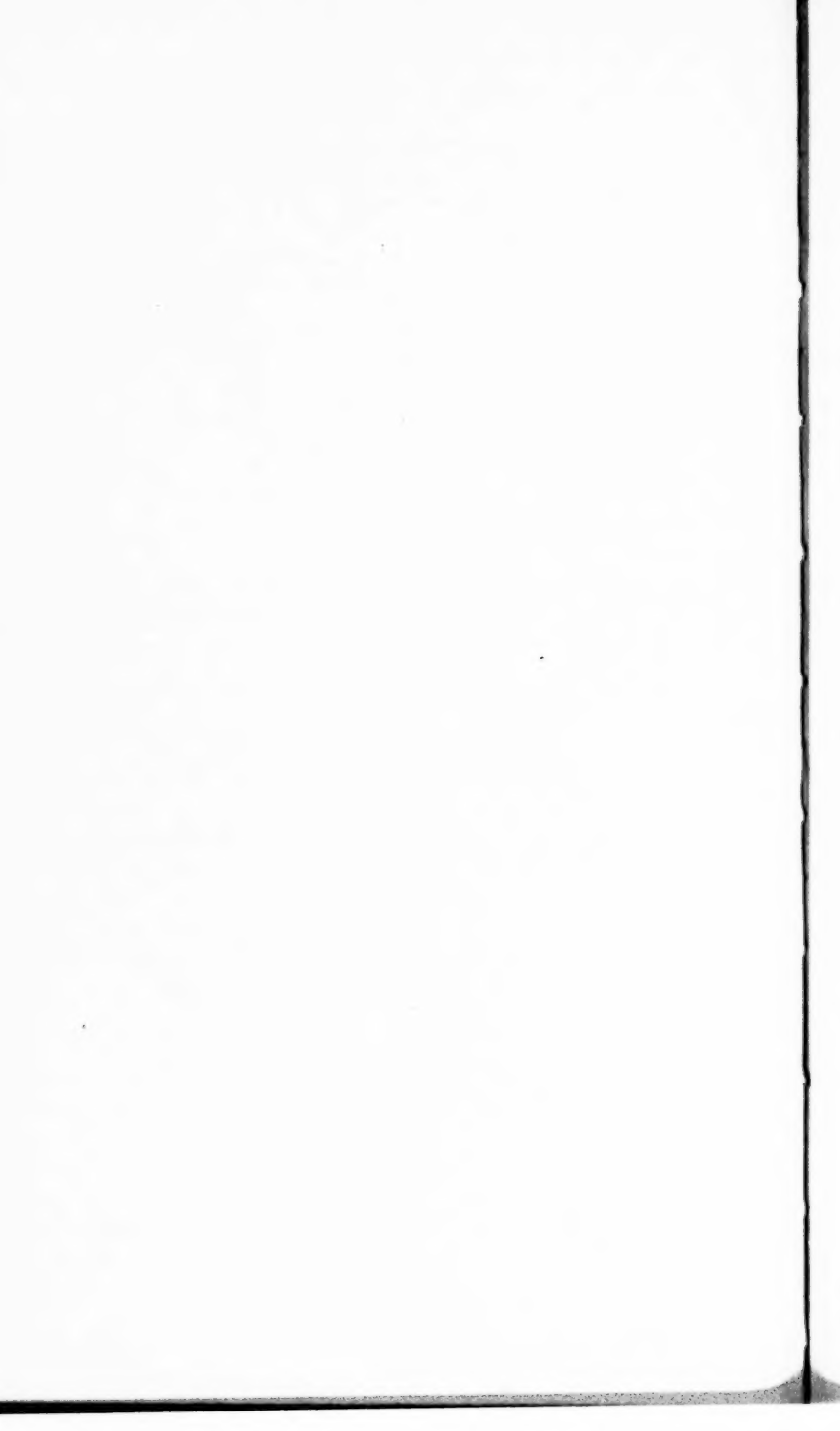
CASE "B".

*To the Honorable, William Howard Taft, Chief Justice,
and the Associate Justices of the Supreme Court of
the United States:*

Now comes the petitioner, the State of Maryland, by Albert C. Ritchie, its Governor, and moves the Court for leave to file the petition for writ of mandamus hereto annexed; and further moves that an order and rule be entered and issued directing Morris A. Soper, Judge of the District Court of the United States for the District of Maryland, and also directing the said District Court to show cause why a writ of mandamus should not issue against them and each of them in accordance with the prayer of said petition, and why your petitioner should not have such relief and such other and further relief in the premises as may be just and meet.

THOS. H. ROBINSON,
Attorney General of Maryland,

HERBERT LEVY,
Assistant Attorney General of Maryland,
Attorneys for Petitioner.



IN THE

Supreme Court of the United States

IN THE MATTER OF THE APPLICATION OF THE
STATE OF MARYLAND FOR A WRIT OF MAN-
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STATE OF MARYLAND

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OF MARYLAND.

IN THE
SUPREME COURT
OF THE
UNITED STATES.

CASE "B".

*To the Honorable, William Howard Taft, Chief Justice,
and the Associate Justices of the Supreme Court of
the United States:*

Your petitioner, the State of Maryland, by Albert C. Ritchie, its Governor, respectfully shows unto you Honors that the jurisdiction of the Circuit Court for Harford County, a Court clothed by the Constitution and Laws of the State of Maryland with original jurisdiction, has been invaded by Morris A. Soper, Judge of the District Court of the United States for the District of Maryland, and by the said District Court, whose acts and doings complained of are as follows, to wit:

1. On the 10th day of February, 1925, Robert D. Ford, John M. Barton, E. Franklin Ely, Wilton L. Stevens and William Trabing were indicted in the Circuit Court for Harford County, State of Maryland, for conspiracy to obstruct justice, committed on or about November 20, 1924. On the 11th day of February, 1925, said Judge, Morris A.

Soper, and the said District Court issued an order, directed to the Circuit Court for Harford County, and the Judge and the Clerk thereof, whereby he caused the said prosecution, styled "State of Maryland vs. Robert D. Ford, John M. Barton, E. Franklin Ely, Wilton L. Stevens and William Trabing," to be removed from the Circuit Court for Harford County to the District Court of the United States for the District of Maryland, upon the supposed authority of *Section 33 of the Judicial Code (U. S. Comp. St., Sec. 1015, being Judicial Code, Sec. 33, as amended, Act Aug. 23, 1916, c. 99)*. The petition, upon which the said removal was granted, alleged that on the day when the conspiracy is alleged to have been committed, "the petitioner William Trabing was a chauffeur of the Reliable Transfer Company, and was at the time above mentioned, engaged and employed by Edmund Budnitz, the Federal Prohibition Director of the State of Maryland, in the capacity of a chauffeur for Federal Prohibition Agents, Robert D. Ford, John M. Barton, Wilton L. Stevens and E. Franklin Ely, all being officers of the Internal Revenue Service of the United States; that the said petitioner, William Trabing, was at the said time a person acting under and by authority of the said Federal Prohibition Director, Edmund Budnitz, and the said Federal Prohibition Agents, Robert D. Ford, John M. Barton, Wilton L. Stevens and E. Franklin Ely, and that the said agents were on November 19th, 1924, and now are Federal Prohibition Agents of the Bureau of Internal Revenue of the Treasury Department of the United States." *For convenience, however, all of the said petitioners will be hereafter designated as "Federal Prohibition Agents."*

2. Upon said petition, the said Judge Morris A. Soper, by "writ of *habeas corpus cum causa*," also took the bodies of the aforesaid Federal Prohibition Agents from the cus-

tody of the jailor of Harford County, and let said Federal Prohibition Agents to bail.

3. After the record of the proceedings of the Circuit Court for Harford County was filed in the said District Court of the United States for the District of Maryland, the State of Maryland, on the 12th day of March, 1925, appeared specially in the said District Court, held at Baltimore, Maryland, and moved the said Court to quash the writ and rescind the order, issued by the said District Court on the 11th day of February, 1925, as aforesaid, and to remand the said case to the Circuit Court for Harford County, for the following reasons:

(a) Because the allegations of the petition for removal failed to disclose a state of facts entitling the Federal Prohibition Agents to have the said writ issued.

(b) Because the allegations set forth in said petition were contradictory, evasive, founded on hearsay and in part untrue.

(c) Because the issuance of said writ upon the allegations of said petition and the certificate of counsel attached thereto was beyond the power and jurisdiction of the said District Court as limited by the Constitution and laws of the United States.

(d) Because the said writ, if allowed to stand, constituted an interference by the said District Court with the due and orderly administration of justice in the Circuit Court for Harford County, contrary to the Constitution and laws of the United States.

(e) Because there was no allegation in the petition that authorized the said District Court to issue any writ what-

soever against the Judge or the Clerk of the Circuit Court for Harford County.

(f) Because the crime of conspiracy to obstruct justice against the laws of the State of Maryland, for which the Federal Prohibition Agents had been indicted in the Circuit Court for Harford County, could not possibly have any rational connection with their duties as Federal Prohibition Agents of the Bureau of Internal Revenue of the Treasury Department of the United States.

(g) Because it is inconceivable that in the discharge of their duties as Federal Prohibition Agents of the Bureau of Internal Revenue of the Treasury Department of the United States, it would be necessary for the said Federal Prohibition Agents to commit the crime of conspiracy to obstruct justice against the laws of the State of Maryland.

4. The said motion to remand was fully argued before the said Judge of the said District Court on the 17th day of March, 1925, and on the same day the said Judge, being of the opinion that the said petition for removal was defective, upon application by the United States on behalf of the said Federal Prohibition Agents, granted leave to the United States to amend said petition for removal.

5. Thereafter, to wit, on the 31st day of March, 1925, the said Federal Prohibition Agents filed their amended petition in said cause, pursuant to the leave granted them by the aforesaid order of March 17, 1925, whereupon the State of Maryland again appeared specially in said cause and again moved to quash the writ and rescind the order of February 11th, 1925, and to remand the said cause to the Circuit Court for Harford County, and assigned substantially the same reasons for the said "motion to quash and remand" as those set forth in its "motion to quash and

remand" filed in reply to the original petition for removal, as aforesaid.

6. On the 5th day of May, 1925, after a second hearing the said Judge and the said Court denied the motion to remand the case to the Circuit Court for Harford County, and ratified and confirmed the order of February 11, 1925, removing the said cause to the said District Court from the Circuit Court for Harford County.

7. Your petitioner files with its petition and prays to be taken as part and parcel hereof, a certified copy of the Record in "State of Maryland vs. Robert D. Ford, John M. Barton, E. Franklin Ely, Wilton L. Stevens and William Trabling," in the District Court of the United States for the District of Maryland, marked "Exhibit A," and a certified copy of the Record in "State of Maryland vs. Robert D. Ford, John M. Barton, E. Franklin Ely, Wilton L. Stevens and William Trabling" in the Circuit Court for Harford County, marked "Exhibit B."

8. Your petitioner avers and charges that the action and conduct of Judge Soper were a gross violation of the Constitution and laws of Maryland and of the Constitution and laws of the United States, because neither the said District Court of the United States for the District of Maryland nor Judge Soper had jurisdiction over the case unlawfully removed by the said Judge Soper, as aforesaid. The prosecution is in the name of the State of Maryland; the crime—conspiracy to obstruct, hinder and interfere with the administration of justice by the Courts of said State—was committed within its territorial limits.

9. Your petitioner alleges that Judge Soper was not authorized to remove the said prosecution, under *Section 33 of the Judicial Code*, upon the allegations of the original petition for removal, because (inter alia):

(a) Federal Prohibition Agents are not officers "appointed under or acting by authority of any Revenue Law of the United States" or persons "acting under or by authority of any such officer," within the meaning of *Section 33 of the Judicial Code*.

(b) Said petition does not show that the criminal prosecution pending in the Circuit Court for Harford County was on account of any act done under color of the office of the defendants in said prosecution, or under color of any Revenue Laws of the United States, or on account of any right, title, or authority claimed by the said defendants under any Revenue Law of the United States, within the meaning of said *Section 33 of the Judicial Code*.

(c) The said petition does not set forth any facts to show that the prosecution for conspiracy to obstruct justice arose out of the discharge of the official duties of the petitioners, as Federal Prohibition Agents, or in the discharge of their duties under the National Prohibition Law or that the said prosecution grew out of an effort on the part of said petitioners to protect themselves and each other in the discharge of their duty or arose out of any investigation of any violation of the National Prohibition Law, made or attempted to be made by them in the discharge of their respective duties under said law.

10. Your petitioner avers that the crime of conspiracy to obstruct justice, with which said Federal Prohibition Agents are charged, was their wanton, wilful, deliberate, premeditated act and is not justifiable upon any ground whatsoever, and that the said Federal Prohibition Agents failed to set up any facts to show that said prosecution grew out of an act done by them under color of their office or of any Revenue Law.

11. Your petitioner further avers that the amended petition for removal is also defective and insufficient for the following reasons:

(a) It fails to specify any facts tending to show that the prosecution, which said Federal Prohibition Agents sought to remove, grew out of any act done under color of their office or of any Revenue Law.

(b) Taken in connection with the allegations of the original petition, the amended petition clearly shows that in the investigation which they claim to have been making shortly before the acts and happenings for which they were indicted, they were acting in the capacity of Federal Prohibition Agents under the National Prohibition Law, and as such they were not "Revenue Officers" and are not entitled to have the prosecution against them removed to the Federal Court under the provisions of *Section 33 of the Judicial Code*.

(c) *Section 28 of Title II of the National Prohibition Act*, upon which the amended petition relies as additional authority for the removal of the prosecution, does not, either in its letter or spirit, authorize the removal of a criminal prosecution pending in a State Court against a Federal Prohibition Agent.

(d) The statement, in the amended petition, of the facts alleged to bring the prosecution within the provisions of *Section 33 of the Judicial Code*, clearly negatives the contention of the said Federal Prohibition Agents that the prosecution arose out of any act done under color of their office or of the Revenue Laws and Prohibition Laws of the United States.

(e) The crime with which the said Federal Prohibition Agents are charged is their unlawful conspiracy, confedera-

tion, combination and agreement to commit perjury before a Coroner's Inquest, held in Harford County, Maryland, on the twentieth day of November, 1924, for the purpose of ascertaining when, where, how and after what manner one Lawrence Wenger, found dead on the nineteenth day of November, 1924, had come to his death in said County, and to conceal from said Inquest their knowledge of the matters, facts, circumstances and things pertinent to the subject matter of said inquiry, in order to pervert the due course of law and justice. It was obviously not in accordance with the duty of said Federal Prohibition Agents "as investigating and reporting officers of the Federal Government, and in compliance with their duties as Federal Prohibition Officers," as alleged in said amended petition, to relate to the Sheriff and State's Attorney for Harford County, to a number of men who subsequently served upon the Coroner's Jury, as mentioned in the indictment, and to two detectives of the Baltimore City Police Headquarters, the events which took place on the nineteenth day of November, 1924, or to go over for such persons the scene of said occurrences.

(f) It was likewise not "in accordance with their duty as investigating and reporting officers of the Federal Government," as alleged in said amended petition, that they were called before the Coroner's Inquest, as described in the indictment, and related the said events which took place on the nineteenth day of November, 1924; nor were they, as alleged, acting under the direction of the Maryland Federal Prohibition Director, when they appeared before the said Coroner's Inquest and related the facts aforementioned, but in appearing before said Inquest and relating said facts, they were merely performing the duties imposed upon them under the laws of the State of Maryland. The coroner and Justice of the Peace was a State officer, constituted and appointed under the laws of the State of Maryland; the Inquest was a State proceeding, provided for by

State laws, and the appearance and testimony of said Federal Prohibition Agents before said Inquest were not in pursuance of any duty imposed upon them under the National Prohibition Act or of any Revenue Law.

(g) *Section 33 of the Judicial Code* does not contemplate that the officers mentioned therein should be entitled to remove all causes or prosecutions brought against them during their tenure of office merely by reason of their holding said offices, but said act only applies to those actions and prosecutions which arise out of any act done under color of their office or the law under which they are acting, or on account of any right, title or authority claimed by such officers or other persons under any such law.

12. Your petitioner alleges that the constitution does not confer upon Congress authority to define and punish crimes against the State; that to permit such intervention by the Federal power, your petitioner charges would be the utter and complete destruction of the State sovereignty and State autonomy.

13. Your petitioner is advised that conspiracy is a common law offense, that Federal courts have no common law jurisdiction in criminal cases; therefore, the trial of the case of "State of Maryland vs. Robert D. Ford, John M. Barton, E. Franklin Ely, Wilton L. Stevens and William Trabing" must be held in the Circuit Court for Harford County, which Court only has jurisdiction, and your petitioner charges that Judge Soper by removing the said case from the Circuit Court for Harford County to the District Court of the United States for the District of Maryland, and taking the said Federal Prohibition Agents from the custody of the jailor of said county, acted not only without the authority and sanction of law, but in violation of law, and his every act and order are null and void and should be so adjudged.

14. Your petitioner further avers that in the prosecution aforesaid, no Federal question is involved; and that the original and amended petitions for removal filed by the said Federal Prohibition Agents pleaded no right or privilege conferred by the Constitution and laws of the United States.

15. Your petitioner is advised that the said Judge, Morris A. Soper, in removing the said case and in refusing to remand the same upon the application of your petitioner, has transcended the jurisdiction of his Court and has undertaken the exercise of powers not vested in him or his Court by any law of the United States.

16. Your petitioner is informed and believes and charges that it is the intention of the said Judge, Morris A. Soper, by color of his office as Judge aforesaid, to try the said Federal Prohibition Agents in the District Court of the United States for the District of Maryland at the present term of said Court, now being held in the City of Baltimore, for the offense aforesaid, committed against the laws of the State of Maryland, and thereby violate the Constitution of Maryland, set aside its laws and usurp the jurisdiction of its courts.

Your petitioner, therefore, prays that a rule may be awarded by this Court requiring the said Morris A. Soper, Judge of the District Court of the United States for the District of Maryland, and the said District Court to show cause why a mandamus should not be issued, forbidding and preventing the said Judge and the said Court from taking cognizance of said case, and from any, all and every act connected with said trial, and commanding them to remand the said case to the Circuit Court for Harford County and to redeliver to the jailor of said Harford County the

bodies of the said Federal Prohibition Agents, to be dealt with according to the laws of the said State.

And as in duty bound, etc.

ALBERT C. RITCHIE,
Governor of Maryland.

THOS. H. ROBINSON,
Attorney General of Maryland,

HERBERT LEVY,
Assistant Attorney General of Maryland,
Attorneys for the State of Maryland.

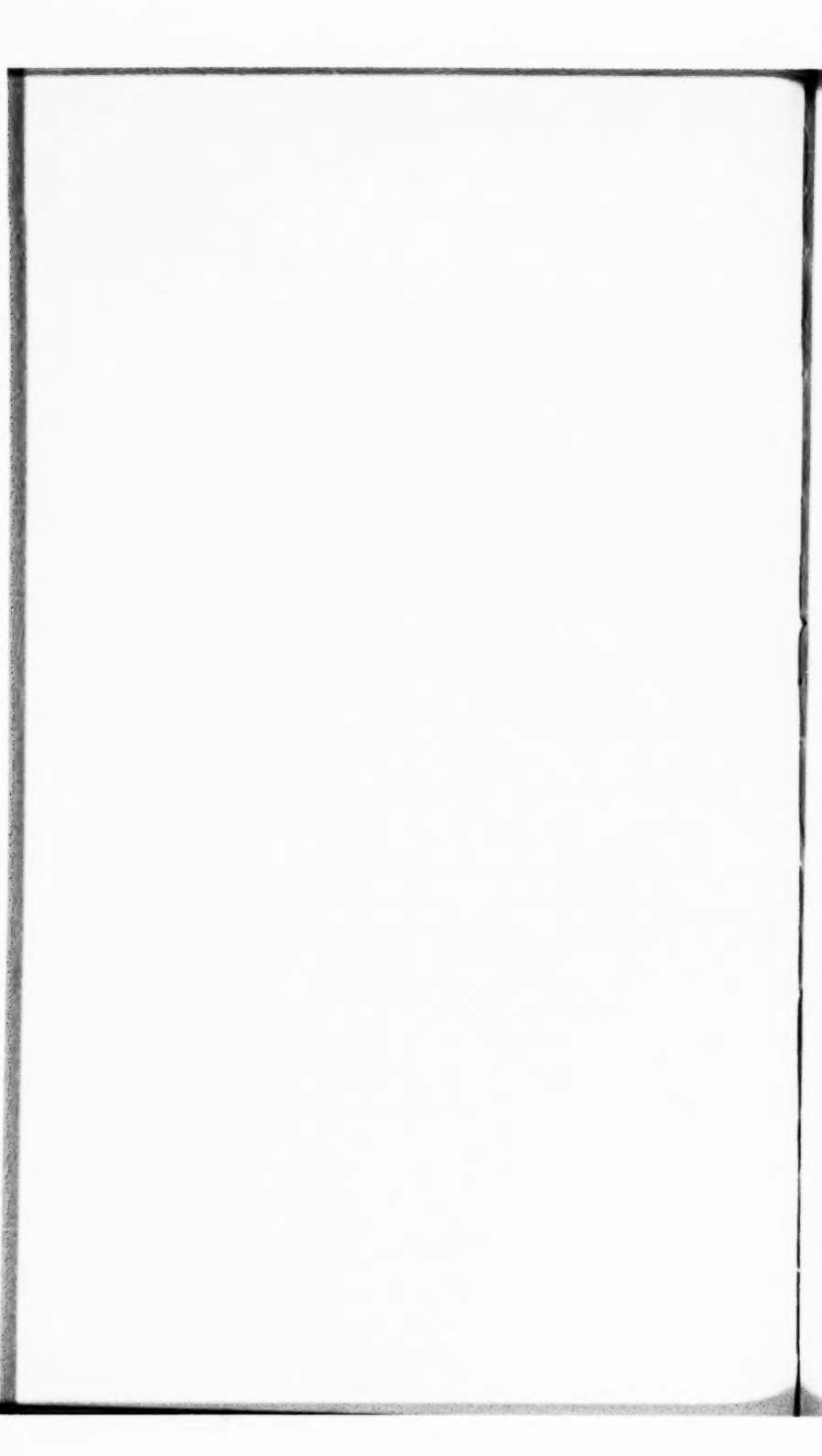
STATE OF MARYLAND,

CITY OF BALTIMORE, to wit:

I HEREBY CERTIFY, that on this twenty-fourth day of September, 1925, before me the subscriber, a Notary Public of the State of Maryland, in and for Baltimore City aforesaid, personally appeared Albert C. Ritchie, Governor of the State of Maryland, and made oath that the allegations contained in the petition for mandamus hereto annexed are true to the best of his knowledge, information and belief.

Witness my hand and Notarial Seal.

(Notarial Seal.) ANNA DAVIS GREER,
Notary Public.



IN THE

Supreme Court of the United States

IN THE MATTER OF THE APPLICATION OF THE
STATE OF MARYLAND FOR A WRIT OF MAN-
DAMUS DIRECTED TO THE HONORABLE,
MORRIS A. SOPER, JUDGE OF THE DISTRICT
COURT FOR THE DISTRICT OF MARYLAND,
AND DIRECTED ALSO TO SAID DISTRICT
COURT.

CASE "B".

EXHIBIT A.

MR. CLERK:

Please file.

THOS. H. ROBINSON,

*Attorney General for the State
of Maryland.*

HERBERT LEVY,

*Asst. Attorney General of the
State of Maryland.*

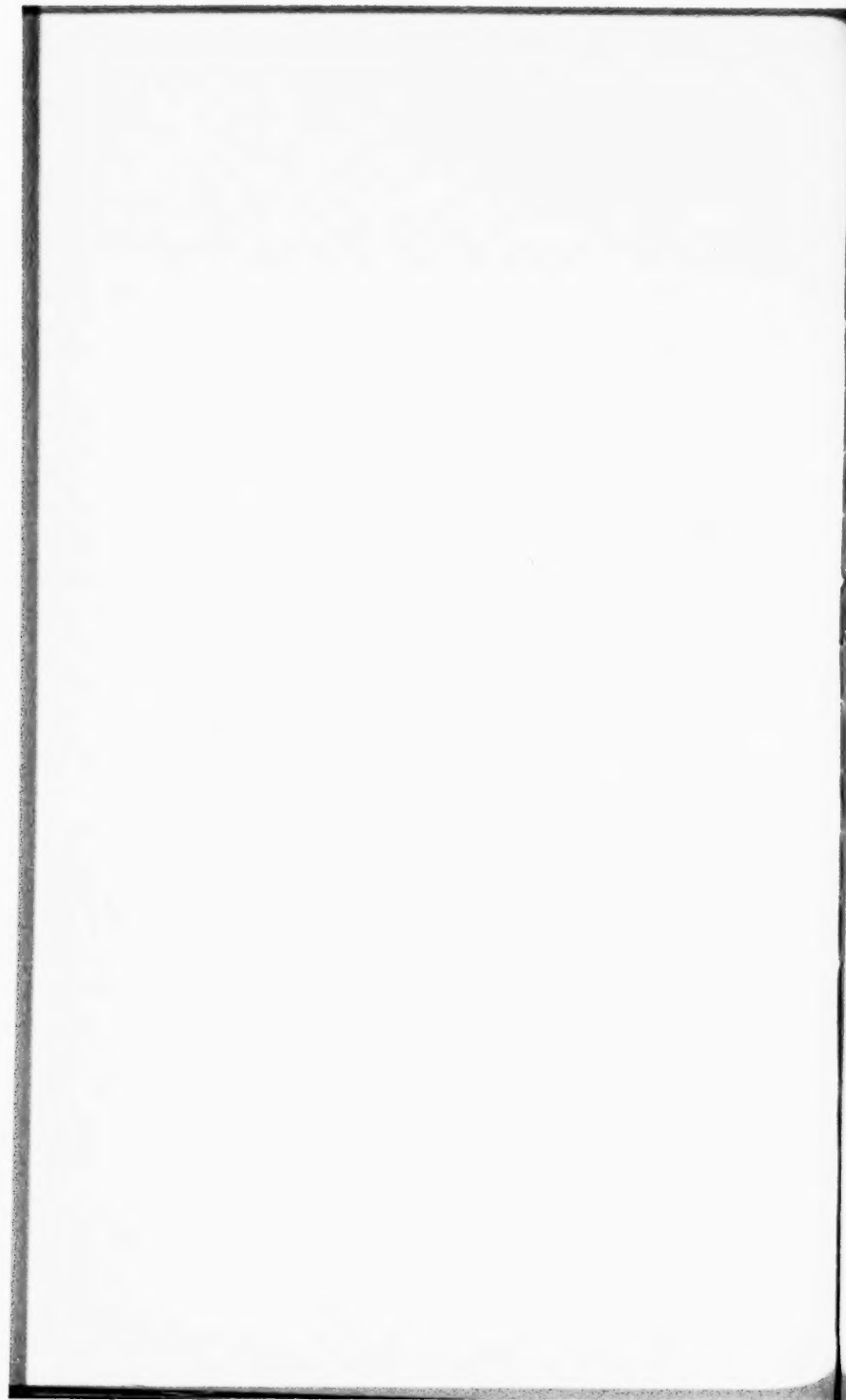


EXHIBIT A.

STATE OF MARYLAND
vs.
 ROBERT D. FORD, E. FRANK
 ELY, JOHN M. BARTON,
 WILTON L. STEVENS and
 WILLIAM TRABING.

IN THE
 DISTRICT COURT OF THE
 UNITED STATES
 FOR THE
 DISTRICT OF MARYLAND.

 No. 7190 Criminal.

DOCKET ENTRIES.

1925.

- Feby. 11—Petition of Defendants for removal of case from Criminal Court of Harford County and for a Writ of Habeas Corpus Cum Causa and Order of Court directing Writ of Habeas Corpus Cum Causa to issue to Criminal Court of Harford County, filed.
- Feby. 11—Writ of Habeas Corpus Cum Causa retble within ten days issued. Copy of Writ, Copy Petition and Order sent to Marshal to be served. (Executed. For return see back of Writ.)
- Feby. 18—Motion to Quash Writ and Rescind Order of Court filed.
- Feby. 21—Record of Proceedings of Circuit Court for Harford County filed.
- Mch. 17—Order of Court granting leave to the United States to amend its Petition filed.

Mch. 31—Amended Petition of Defendants for removal of case from Criminal Court of Harford County and for a Writ of Habeas Corpus Cum Causa filed.

April 11—Motion to Quash and Remand Indictment for Conspiracy to Obstruct Justice on Amended Petition filed.

May 5—Order of Court Overruling Motion to Quash and Remand filed.

May 5—Stipulation filed.

**PETITION FOR REMOVAL AND ORDER
OF COURT THEREON.**

Filed February 11, 1925.

STATE OF MARYLAND

vs.

ROBERT D. FORD, JOHN M.
BARTON, E. FRANK ELY,
WILTON L. STEVENS and
WILLIAM TRABING.

IN THE
DISTRICT COURT OF THE
UNITED STATES
FOR THE
DISTRICT OF MARYLAND.

To the Honorable, the Judge of said Court:

The Petition of Robert D. Ford, John M. Barton, E. Frank Ely, Wilton L. Stevens and William Trabling, respectfully represents:

1. That on or about the tenth day of February, in the year of our Lord, nineteen hundred and twenty-five, an indictment was returned into the Criminal Court for Harford County, State of Maryland, by a Grand Jury of the said Court, which indictment charged your Petitioners with the crime of conspiracy to obstruct justice in connection with the investigation on or about November 20, 1924, and the prosecution of the said defendants for the alleged murder of Lawrence Wenker; contrary to the laws of the State of Maryland.

2. That on the nineteenth day of November, nineteen hundred and twenty-four, the petitioner William Trabling was a chauffeur of the Reliable Transfer Company and was at the time above mentioned engaged and employed by Edmund Budnitz, Federal Prohibition Director of the State of Maryland, in the capacity of a chauffeur for Federal Prohibition Agents, Robert D. Ford, John M. Barton, Wil-

ton L. Stevens and E. Frank Ely, all being officers of the Internal Revenue Service of the United States; that the said Petitioner William Trabing was at the said time a person acting under and by authority of the said Prohibition Director Edmund Budnitz and the said Federal Prohibition Agents Robert D. Ford, John M. Barton, Wilton L. Stevens and E. Frank Ely; and that the said agents were on November 19, 1924, and now are Federal Prohibition Agents of the Bureau of Internal Revenue of the Treasury Department of the United States.

3. That the act or acts done by the Petitioner William Trabing, at the time when they are alleged to have been guilty of conspiracy to obstruct justice, which charge he denies, was done by him while acting under and by authority of Federal Prohibition Director, Edmund Budnitz and Federal Prohibition Officers Robert D. Ford, John M. Barton, Wilton L. Stevens and E. Frank Ely, in the discharge of their official duties as Prohibition Agents as aforesaid and in discharge of his duties as chauffeur and helper of the said agents in making and attempting to make an investigation in the discharge of their duty and of his duty as aforesaid and in protecting himself and the said officers of the Internal Revenue in the discharge of his and their duty.

4. That the act or acts done by the Petitioners Robert D. Ford, John M. Barton, Wilton L. Stevens and E. Frank Ely, at the time when they are alleged to have been guilty of conspiracy to obstruct justice, which charge they deny, was done by them in the discharge of their official duties as Prohibition Agents as aforesaid in making and attempting to make an investigation in the discharge of their duties as aforesaid and in protecting themselves as fellow officers of the Internal Revenue in the discharge of their duty.

5. That the said criminal prosecution commenced by said indictment is now pending in the Criminal Court for Harford County and is a criminal prosecution on account of the acts alleged to have been done by your petitioners in the course of the performance of their duties as Federal Prohibition Agents, which acts they deny having done.

WHEREFORE, your Petitioners pray that the said suit may be removed from the Criminal Court for Harford County, aforesaid, to this honorable Court and that writs of certiorari and habeas corpus cum causa issue for that purpose pursuant to the statute of the United States in such case made and provided. (U. S. Compiled Statutes, Sec. 1015, being Judicial Code, Sec. 33, as amended, Act August 23, 1916, C. 399).

WILLIAM M. TRABING,

JOHN M. BARTON,

WILTON L. STEVENS,

E. FRANK ELY,

ROBERT D. FORD.

By A. W. W. WOODCOCK,
United States Attorney for the District
of Maryland.

2/11/25.

UNITED STATES OF AMERICA, DISTRICT OF MARYLAND, TO WIT:

I hereby certify that before me, the undersigned, personally appeared John M. Barton, E. Frank Ely, Wilton L. Stevens, Federal Prohibition Agents, William Trabing,

chauffeur for the said agents, and Amos W. W. Woodcock, United States Attorney for the District of Maryland, and made oath in due form of law that they are the persons whose names are subscribed to the foregoing petition, and that they have read the petition, and the matters contained therein are true in substance and in fact.

CHAS. W. ZIMMERMANN,
Chief Deputy Clerk of the
District Court of the
United States for the Dis-
trict of Maryland.

I, A. W. W. Woodcock, United States Attorney in and for the District of Maryland, do hereby certify that, as attorney for the petitioners named above, I have examined the proceedings against them mentioned in the foregoing petition and have carefully inquired into all the matters set forth in the said petition and I believe the same to be true.

A. W. W. WOODCOCK,
United States Attorney.

ORDER.

Upon motion of A. W. W. Woodcock, United States Attorney, attorney for Robert D. Ford, John M. Barton, E. Frank Ely, Wilton L. Stevens and William Trabing, and on filing the petition of the said Robert D. Ford, John M. Barton, E. Frank Ely, Wilton L. Stevens and William Trabing, praying for the removal to this Court from the Criminal Court of Harford County in the State of Maryland, of the criminal prosecution for conspiracy to obstruct

justice against the said Robert D. Ford, John M. Barton, E. Frank Ely, Wilton L. Stevens and William Trabing in said Court, entitled State of Maryland versus Robert D. Ford, John M. Barton, E. Frank Ely, Wilton L. Stevens and William Trabing, and for the issuance of writs of certiorari and habeas corpus cum causa for that purpose, pursuant to Section 33 of the Judicial Code of the United States, and the Court having read said petition, it is ORDERED this eleventh day of February, nineteen hundred and twenty-five, that writs of certiorari and habeas corpus cum causa issue herein directed to the said Court requiring said Court to transmit to this Court within ten days the record and proceedings in said case.

MORRIS A. SOPER,
United States District Judge,
United States District
Court for the District of
Maryland.

**ORDER OF REMOVAL, WRIT OF CERTIORARI AND
HABEAS CORPUS CUM CAUSA.**

Issued February 11, 1925.

STATE OF MARYLAND
vs.
ROBERT D. FORD, JOHN M.
BARTON, E. FRANK ELY,
WILTON L. STEVENS and
WILLIAM TRABING.

IN THE
DISTRICT COURT OF THE
UNITED STATES
FOR THE
DISTRICT OF MARYLAND.

*To the Honorable the Circuit Court of Harford County in
the State of Maryland, the Judge of the said Court and
the Clerk of the said Court, Greeting:*

Being informed that there is now pending before you a suit in which the State of Maryland is plaintiff and Robert D. Ford, John M. Barton, E. Frank Ely, Wilton L. Stevens and William Trabling are the defendants, which said suit is a criminal prosecution against the said Robert D. Ford, John M. Barton, E. Frank Ely, Wilton L. Stevens and William Trabling, charging the defendants with conspiracy to obstruct justice, the said suit arising out of facts which occurred while the said William Trabling was discharging his duties as chauffeur and helper of the Prohibition Agents, Officers of the Internal Revenue, the co-defendants, and acting in and by authority of Federal Prohibition Director Edmund Budnitz and Federal Prohibition Officers Robert D. Ford, John M. Barton, Wilton L. Stevens and E. Frank Ely, who were acting in the discharge of their official duties as Prohibition Agents, officers of the Internal Revenue Service of the United States as aforesaid in mak-

ing and attempting to make an investigation in the discharge of their duty and in protecting themselves in the discharge of their duty under the National Prohibition Act of the said United States; and which said suit has not yet been heard and determined.

Now, therefore, we being willing that said cause and the records and proceedings therein should be certified by said Judge of the Circuit Court of Harford County, in the State of Maryland, do hereby command you that you immediately deliver the bodies of Robert D. Ford, John M. Barton, E. Frank Ely, Wilton L. Stevens and William Trabing to the custody of the United States Marshal to be dealt with in this cause according to law and the order of the District Court for the District of Maryland; and that you send, without delay and within ten days to the District Court of the United States, the records and proceedings in said cause so that the said District Court of the United States may act thereon as of right and according to the laws and customs of the said United States, among others, Section 1015 of the United States Compiled Statutes, being Judicial Code, Sec. 33, as amended by its Act of August 23, 1916, C. 399.

WITNESS the Honorable Morris A. Soper, Judge of said District Court of the United States this eleventh day of February, A. D. nineteen hundred and twenty-five.

ARTHUR L. SPAMER,
Clerk of the District Court
of the United States for
the District of Maryland.

(Seal.)

The foregoing Writ is thus endorsed:

"Copy of within Writ of Habeas Corpus Cum Causa and Copy Petition for and Order of Removal, left with J. H. Bradford, Deputy Clerk, Circuit Court of Harford County, at Belair, Md., this 12th day of February, 1925.

GEORGE W. COLLIER,
United States Marshal,
District of Maryland,
Per: GEO. H. EDELEN,
Chief Deputy Marshal."

MOTION TO QUASH AND REMAND.

Filed February 18, 1925.

STATE OF MARYLAND
vs.
 ROBERT D. FORD, JOHN M.
 BARTON, E. FRANK ELY,
 WILTON L. STEVENS and
 WILLIAM TRABING.

IN THE
 DISTRICT COURT OF THE
 UNITED STATES
 FOR THE
 DISTRICT OF MARYLAND.

To the Honorable, Morris A. Soper, Judge of said Court:

The State of Maryland, by Thomas H. Robinson, its Attorney-General, and W. Worthington Hopkins, State's Attorney for Harford County, who appear specially for the purpose of this motion, and for no other purpose, move this honorable Court to quash the writ and rescind the order issued in the above entitled case, directed to the Judge of the Circuit Court for Harford County, and the Clerk thereof, for the following reasons:

(1) Because the allegations of the petition filed in this case do not disclose a state of facts entitling the petitioner to have said writ issued, or the charge against them removed into this Court.

(2) Because the allegations set forth in said petition are contradictory, evasive, founded on hearsay, and in part untrue.

(3) Because the issuance of said writ upon the allegations of said petition and attached certificate of counsel is beyond the power and jurisdiction of this Court as limited by the Constitution and laws of the United States.

(4) Because the said writ, if allowed to stand, constitutes an interference by this Court with the due and orderly administration of justice in the Circuit Court for Harford County contrary to the Constitution and laws of the United States.

(5) Because there is no allegation in said petition that authorizes this Court to issue any writ whatsoever against the Judge or the Clerk of the Circuit Court for Harford County.

(6) Because the crime of conspiracy to obstruct justice against the laws of the State of Maryland for which the said Robert D. Ford, John M. Barton, E. Frank Ely, Wilton L. Stevens and William Trabing have been indicted in the Circuit Court for Harford County could not possibly have any causal connection with the duties of the said Robert D. Ford, John M. Barton, E. Frank Ely, Wilton L. Stevens and William Trabing as Federal Prohibition Agents of the Bureau of Internal Revenue of the Treasury Department of the United States.

(7) Because it is inconceivable that in the discharge of their duties as Federal Prohibition Agents of the Bureau of Internal Revenue of the Treasury Department of the United States it would be necessary for the said Robert D. Ford, John M. Barton, E. Frank Ely, Wilton L. Stevens and William Trabing to commit the crime of conspiracy to obstruct justice against the laws of the State of Maryland.

(8) And for other good and sufficient reasons to be shown at the hearing.

THOMAS H. ROBINSON,
Attorney-General of Maryland.

W. WORTHINGTON HOPKINS,
State's Attorney for Harford County.

ORDER GRANTING LEAVE TO AMEND PETITION.

Filed March 17, 1925.

STATE OF MARYLAND
vs.
 ROBERT D. FORD, JOHN M.
 BARTON, E. FRANKLIN ELY,
 WILTON L. STEVENS and
 WILLIAM TRABING.

IN THE
 DISTRICT COURT OF THE
 UNITED STATES
 FOR THE
 DISTRICT OF MARYLAND.

 (Indictment for Conspiracy
 to Obstruct Justice.)

This cause standing ready for hearing, and being submitted upon motion of the State of Maryland to quash the writ and rescind the order issued in the above entitled case on the 11th day of February, 1925, directed to the Judge of the Circuit Court for Harford County, and the Clerk thereof, and to remand the said case to the Circuit Court for Harford County, the counsel for the parties were heard and the proceedings were read and considered; and the United States having applied for leave of Court to amend the petition, it is therefore ordered this 17th day of March, in the year 1925, by the District Court of the United States for the District of Maryland:

That leave be and it is hereby granted to the United States to amend said petition.

MORRIS A. SOPER,
 United States District Judge.

**AMENDED PETITION FOR REMOVAL AND
ORDER OF COURT.**

Filed March 31, 1925.

STATE OF MARYLAND
vs.
ROBERT D. FORD, JOHN M.
BARTON, E. FRANKLIN ELY,
WILTON L. STEVENS and
WILLIAM TRABING.

IN THE
DISTRICT COURT OF THE
UNITED STATES
FOR THE
DISTRICT OF MARYLAND.

AMENDED PETITION.

To the Honorable the Judge of said Court:

The Petition of Robert D. Ford, John M. Barton, E. Franklin Ely, Wilton L. Stevens and William Trabling respectfully represents:

1. That on or about the tenth day of February, in the year of our Lord nineteen hundred and twenty-five, an indictment was returned in the Circuit Court of the Third Judicial Circuit of the State of Maryland by the Grand Inquest of the State of Maryland for the body of Harford County, which indictment charged your Petitioners with the crime of conspiracy to obstruct justice, as follows:

“The Jurors of the State of Maryland, for the body of Harford County, do on their oath present that before and at the time of the commission of the offense by Wilton L. Stevens, Robert D. Ford, John M. Barton, E. Franklin Ely

and William Trabing hereinafter alleged to have been committed by them, to wit: on the twentieth day of November, in the year of our Lord, nineteen hundred and twenty-four, there was pending a certain inquiry, investigation and inquest before Lewis J. Williams, Esquire, then a Justice of the Peace of the State of Maryland, in and for Harford County aforesaid, then duly commissioned and qualified as such Justice of the Peace as aforesaid; and then duly acting and sitting as a Coroner at the Court House in Bel Air in said County and before a jury duly summoned and sworn by said Lewis J. Williams, by whom, as such Justice of the Peace as aforesaid, duly acting and sitting then and there as such Coroner as aforesaid, and by said Jury so by him duly summoned and sworn for that purpose, the said inquiry, investigation and inquest was then and there being held and conducted for the purpose of ascertaining when, where, how, and after what manner one Lawrence Wenger, then lately before found dead in said County, had come to his death in said County.

“And that, at the time of the commission of the offense hereinafter alleged to have been committed by the said Wilton L. Stevens, Robert D. Ford, John M. Barton, E. Franklin Ely, and William Trabing, to wit: on the said twentieth day of November in the said year of our Lord nineteen hundred and twenty-four, at the County aforesaid, the said Wilton L. Stevens, Robert D. Ford, John M. Barton, E. Franklin Ely, and William Trabing knew and were acquainted with divers matters, facts, circumstances and things material to be inquired into by the said Lewis J. Williams, as such Justice of the Peace as aforesaid, so then and there acting and sitting as such Coroner as aforesaid, and by said jury so summoned and sworn as aforesaid; and touching and concerning the said inquiry, investigation, and inquest and the subject matter thereof, all and every of which said matters, facts, circumstances, and things it then

and there was the duty of the said Wilton L. Stevens, Robert D. Ford, John M. Barton, E. Franklin Ely, and William Trabing to make known and reveal to the said Lewis J. Williams, as such Justice of the Peace as aforesaid, so then and there acting and sitting as such Coroner as aforesaid, and to said jury so summoned and sworn as aforesaid; and which the said Wilton L. Stevens, Robert D. Ford, John M. Barton, E. Franklin Ely, and William Trabing were then and there required, on behalf of the State of Maryland, by the said Lewis J. Williams, as such Justice of the Peace as aforesaid, so then and there acting and sitting as such Coroner as aforesaid, to make known, discover and reveal to the said Lewis J. Williams, as such Justice of the Peace as aforesaid, so then and there acting and sitting as such Coroner, as aforesaid, and to said Jury so summoned and sworn as aforesaid.

“And that the said Wilton L. Stevens, late of the County aforesaid, the said Robert D. Ford, late of the County aforesaid, the said John M. Barton, late of the County aforesaid, the said E. Franklin Ely, late of the County aforesaid, and the said William Trabing, late of the County aforesaid, being evil disposed persons, and contriving and intending as much as in them lay to pervert the due course of law and justice, and not regarding their said duty in that behalf on the said twentieth day of November in the year aforesaid, at the County aforesaid, unlawfully did conspire, combine, confederate, and agree together and with each other to deceive the said Lewis J. Williams, so then and there being such Justice of the Peace as aforesaid, and so acting and sitting then and there as such Coroner as aforesaid, and said Jury so summoned and sworn as aforesaid, in the premises; and to withhold and conceal from the said Lewis J. Williams, so then and there being such Justice of the Peace as aforesaid, and so then and there acting and sitting as such Coroner as aforesaid, and from said Jury so summoned and sworn as aforesaid, the said mat-

ters, facts, circumstances, and things; and falsely to represent to the said Lewis J. Williams, so being then and there such Justice of the Peace as aforesaid, and so then and there acting and sitting as such Coroner as aforesaid, and to the said Jury so summoned and sworn as aforesaid, that they and each of them, the said Wilton L. Stevens, Robert D. Ford, John M. Barton, E. Franklin Ely, and William Trabing, were ignorant of all the said matters, facts, circumstances, and things; and falsely to swear before the said Lewis J. Williams, as such Justice of the Peace as aforesaid, so then and there acting and sitting as such Coroner, as aforesaid, and before said jury so summoned and sworn as aforesaid, to the effect last aforesaid; and by such false swearing and divers deceitful, false, and indirect means, ways and methods, to perfect and put into effect the said wicked conspiracy, combination, confederacy, and agreement; and to procure the said Lewis J. Williams, as such Justice of the Peace as aforesaid, so then and there acting and sitting as such Coroner as aforesaid, and said jury so summoned and sworn as aforesaid, to make and return a false and erroneous verdict and finding in the premises with regard to the subject matter of the aforesaid inquiry, investigation, and inquest; and mutually to aid and assist one another in perfecting and putting in execution the said wicked conspiracy, combination, confederacy, and agreement; to the evil and pernicious example of all other persons in the like case offending, and against the peace, government, and dignity of the State.

W. WORTHINGTON HOPKINS,

State's Attorney for Harford County."

2. That on the twentieth day of November, nineteen hundred and twenty-four, the Petitioner William Trabing was a chauffeur of the Reliable Transfer Company and was at the time mentioned engaged and employed by Ed-

mund Budnitz, Federal Prohibition Director of the State of Maryland, in the capacity of a chauffeur for Federal Prohibition Agents Robert D. Ford, John M. Barton, Wilton L. Stevens and E. Franklin Ely, all being officers of the Bureau of Internal Revenue of the Treasury Department of the United States, to act under the direction of the Commissioner of Internal Revenue, the Federal Prohibition Commissioner, and the Federal Prohibition Director for the State of Maryland, and to act under the authority of and to enforce the National Prohibition Act and acts supplemental thereto and all Internal Revenue Laws relating to the manufacture, sale, transportation, control, and taxation of intoxicating liquors, with authority to execute and perform all the duties delegated to such officers by law.

3. That the acts alleged to have been done by the Petitioner William Trabing are alleged to have been done at a time when he was engaged in the discharge of his duties while acting under and by authority of Federal Prohibition Director Edmund Budnitz and Federal Prohibition Officers Robert D. Ford, John M. Barton, Wilton L. Stevens, and E. Franklin Ely, as aforesaid, while the said officers were engaged in the discharge of their official duties as prohibition officers in making and attempting to make an investigation concerning a violation of the National Prohibition Act and other Internal Revenue Laws and while reporting and preparing to report the results of said investigation and in protecting himself and the said officers of the Internal Revenue in the discharge of his and their duty as set out in Paragraph 4 below.

4. That the acts alleged to have been done by the Petitioners Robert D. Ford, John M. Barton, Wilton L. Stevens and E. Franklin Ely are alleged to have been done at a time when they were engaged in the discharge of their official duties as Federal Prohibition Officers, and in making and attempting to make an investigation concerning a

violation of the National Prohibition Act and other Internal Revenue Laws, and in reporting the results of said investigation, and in protecting themselves in the discharge of their duty, as follows:

That on November nineteenth, nineteen hundred and twenty-four, your petitioners were directed by Maryland Federal Prohibition Director Edmund Budnitz to investigate the alleged unlawful distillation of intoxicating liquor on a farm known as the Harry Carver Farm situated approximately three miles from the village of Madonna, about twelve miles northwest from Bel Air, Maryland, which said property was then unoccupied. Your petitioners reached the said farm premises shortly after midday on November nineteenth, nineteen hundred and twenty-four, and discovered there in a secluded wooded valley and swamp materials for an illicit distilling operation, to wit: nine empty mash boxes, three fifty-gallon metal drums, a fifty-gallon condenser, about one thousand pounds of rye meal in bags, a lighted fire, and men's working clothes. Your petitioners thereupon concealed themselves in woods and shrubbery nearby the still site and shortly thereafter became aware of the approach of a number of men bringing with them a still. Your Petitioners thereupon made their presence known to the men who were approaching, and the men immediately dropped the still and fled; and though your petitioners pursued them across the fields, no one of the fleeing men was overtaken or arrested. Thereupon your petitioners returned to the still site, destroyed the materials above mentioned which constituted the unlawful distilling plant, and started to return to their car which had been left some distance from the still site, for the purpose of returning to Baltimore to report to the office of the Maryland Federal Prohibition Director concerning the results of their investigation, when they discovered a man, whom they afterwards learned to be one Lawrence Wenger, mortally wounded and lying beside the path along which

they were walking, some 400 or 500 yards from the still site and in a direction opposite to that from which the unknown men had approached and towards which they fled. Whereupon your petitioners carried the wounded man to their car and took him to Jarrettsville, Maryland, for medical treatment, but, finding none there available, proceeded with all speed to Bel Air, where they sought out in turn Doctors Richardson, Sappington, and Archer, without success, and finally placed the said Lawrence Wenger in charge of Doctor Van Bibber, who pronounced him dead. Your petitioners then, acting under the advice of the said Doctor Van Bibber, removed the body of the said Lawrence Wenger to the undertaking establishment of Dean and Foster in Bel Air. Your petitioners then proceeded to the State's Attorney's office in Bel Air and related the facts aforesaid to the State's Attorney; whereupon, on being informed by them that your petitioners Robert D. Ford, John M. Barton, Wilton L. Stevens, and E. Franklin Ely were prohibition officers and that your petitioner William Trabing was employed by the Federal Prohibition Director as their chauffeur, they were placed under arrest by the Sheriff of Harford County at the instance of the State's Attorney and were confined in the Harford County Jail until the following morning, November twentieth, nineteen hundred and twenty-four. On the morning of November twentieth, nineteen hundred and twenty-four, your petitioners were taken by the Sheriff and State's Attorney, in company with a number of men who that afternoon served upon the Coroner's Jury mentioned in the indictment, and in company with two Baltimore City Police Headquarters Detectives, to the scene of their investigation of the previous day. Then they related the facts concerning their investigation of the unlawful distilling operation and their finding of the said Lawrence Wenger on November nineteenth, and then and there went over the scene of the said occurrences, relating freely and without reservation the events which took

place November nineteenth, in accordance with their duty as investigating and reporting officers of the Federal Government and in compliance with their duties as Federal Prohibition Officers. Likewise on the afternoon of November twentieth your petitioners were called before the Coroner's Inquest heretofore described in the indictment, and freely and without reservation in accordance with their duty as investigating and reporting officers of the Federal Government and acting under the direction of the Maryland Federal Prohibition Director, related the facts aforementioned. And thereupon they were again placed in the Harford County Jail and held for the action of the Harford County Grand Jury until their release on bail upon the evening of November twentieth, nineteen hundred and twenty-four, at the instance of the United States Attorney for the District of Maryland acting on their behalf.

That during November nineteenth and twentieth, nineteen hundred and twenty-four, your petitioners did discuss together the facts relating to the incidents aforementioned, but at no time did they combine nor conspire to obstruct justice as charged in said indictment.

5. That the said criminal prosecution was commenced in the manner following:

A presentment against your petitioners was returned in the Circuit Court for Harford County, February ninth, nineteen hundred and twenty-five, following which presentment the State of Maryland, by the State's Attorney for Harford County, prosecuted and sued forth out of the Circuit Court for Harford County a Writ of the State of Maryland of *Capias Ad Respondendum* against your petitioners, to which there was no return by the Sheriff for Harford County, whereupon the indictment heretofore set forth was returned.

The said indictment is now pending in the Circuit Court for Harford County and is a criminal prosecution on account of acts alleged to have been done by your petitioners at a time when they were engaged in the performance of their duties as Federal Prohibition officers and chauffeur for Federal Prohibition officers as set forth in foregoing paragraphs.

WHEREFORE, your petitioners pray that the said suit may be removed from the Circuit Court for Harford County, aforesaid, to this Honorable Court and that writs of certiorari and habeas corpus cum causa may issue for that purpose pursuant to the statute of the United States in such case made and provided. (U. S. Compiled Statutes, Sec. 1015, being Judicial Code, Sec. 33, as amended, Act August 23, 1916, C. 399; National Prohibition Act, Title II, Section 28.)

ROBERT D. FORD,

JOHN M. BARTON,

E. FRANKLIN ELY,

WILTON L. STEVENS,

WILLIAM TRABING.

By A. W. W. WOODCOCK,

United States Attorney for the
District of Maryland.

3/30/25.

— —

UNITED STATES OF AMERICA, DISTRICT OF MARYLAND, TO WIT:

I hereby certify that before me, the undersigned, personally appeared Robert D. Ford, John M. Barton, Wilton

L. Stevens, E. Franklin Ely, Federal Prohibition Agents, and William Trabing, a chauffeur employed by the Federal Prohibition Director, and made oath in due form of law that they are the persons whose names are subscribed to the foregoing petition, and that they have read the petition, and the matters contained therein are true in substance and in fact.

CHAS. W. ZIMMERMANN,

Chief Deputy Clerk of the District Court
of the United States for the District
of Maryland.

III-30-25.

I, A. W. W. Woodcock, United States Attorney in and for the District of Maryland, do hereby certify that, as attorney for the petitioners named above, I have examined the proceedings against them mentioned in the foregoing petition and have carefully inquired into all the matters set forth in the said petition and I believe the same to be true.

A. W. W. WOODCOCK,

3/30/25.

United States Attorney.

ORDER.

Upon motion of A. W. W. Woodcock, United States Attorney, Attorney for Robert D. Ford, John M. Barton, Wilton L. Stevens, E. Franklin Ely, and William Trabing, praying for the removal to this Court from the Circuit Court for Harford County in the State of Maryland, of the Criminal Prosecution for conspiracy to obstruct justice against the said Robert D. Ford, John M. Barton, Wilton L. Stevens, E. Franklin Ely, and William Trabing, and for

the issuance of writs of certiorari and habeas corpus cum causa for that purpose, pursuant to Section 33 of the Judicial Code of the United States, and Section 28 of Title II of the National Prohibition Act, and the Court having read said petition, it is ORDERED this thirty-first day of March, nineteen hundred and twenty-five, that writs of certiorari and habeas corpus cum causa issue herein directed to the said Court and to the Clerk of the said Court requiring them to transmit to this Court within ten days the records and proceedings in said case.

MORRIS A. SOPER,
United States District Judge,
United States District Court
for the District of Maryland.

**MOTION TO QUASH AND REMAND ON
AMENDED PETITION.**

Filed April 11, 1925.

STATE OF MARYLAND
vs.
ROBERT D. FORD, JOHN M.
BARTON, E. FRANKLIN ELY,
WILTON L. STEVENS and
WILLIAM TRABING.

IN THE
DISTRICT COURT OF THE
UNITED STATES
FOR THE
DISTRICT OF MARYLAND.

(Amended Petition.)

**MOTION TO QUASH AND REMAND—INDICTMENT
FOR CONSPIRACY TO OBSTRUCT JUSTICE.**

To the Honorable, Morris A. Soper, Judge of said Court:

The State of Maryland, by Thomas H. Robinson, its Attorney General, and W. Worthington Hopkins, State's Attorney for Harford County, who appear specially for the purposes of this motion, and for no other purpose, moves this Honorable Court to quash the writ and rescind the order issued in the above entitled case, directed to the Judge of the Circuit Court for Harford County, and the Clerk thereof, and to remand the said case to the Circuit Court for Harford County, for the following reasons:

1. Because the allegations of the second paragraph of the amended petition are untrue.
2. Because the allegations of the petition filed in this case do not disclose a state of facts entitling the petitioners

to have said writ issued, or the charge against them removed into this Court.

3. Because the allegations set forth in said petition are contradictory, evasive, founded on hearsay, and in part untrue.

4. Because the issuance of said writ upon the allegations of said petition and attached certificate of counsel is beyond the power and jurisdiction of this Court as limited by the Constitution and laws of the United States.

5. Because the said writ, if allowed to stand, constitutes an interference by this Court with the due and orderly administration of justice in the Circuit Court for Harford County contrary to the Constitution and laws of the United States.

6. Because there is no allegation in said petition that authorizes this Court to issue any writ whatsoever against the Judge or the Clerk of the Circuit Court for Harford County.

7. Because the crime of conspiracy to obstruct justice against the laws of the State of Maryland for which the said Robert D. Ford, John M. Barton, E. Franklin Ely, Wilton L. Stevens and William Trabing have been indicted in the Circuit Court for Harford County could not possibly have any causal connection with the duties of the said Robert D. Ford, John M. Barton, E. Franklin Ely, Wilton L. Stevens and William Trabing as Federal Prohibition Agents of the Bureau of Internal Revenue of the Treasury Department of the United States.

8. Because it is inconceivable that in the discharge of their duties as Federal Prohibition Agents of the Bureau of Internal Revenue of the Treasury Department of the

United States it would be necessary for the said Robert D. Ford, John M. Barton, E. Franklin Ely, Wilton L. Stevens and William Trabling to commit the crime of conspiracy to obstruct justice against the laws of the State of Maryland.

9. And for other good and sufficient reasons to be shown at the hearing.

THOMAS H. ROBINSON,
Attorney General of Maryland.

W. WORTHINGTON HOPKINS,
State's Attorney for Harford County.

**ORDER OVERRULING MOTION TO QUASH
AND REMAND.**

Filed May 5, 1925.

STATE OF MARYLAND
vs.
ROBERT D. FORD, JOHN M.
BARTON, E. FRANKLIN ELY,
WILTON L. STEVENS and
WILLIAM TRABING.

IN THE
DISTRICT COURT OF THE
UNITED STATES
FOR THE
DISTRICT OF MARYLAND.

(Indictment for Conspiracy
to Obstruct Justice.)

This cause standing ready for hearing and being submitted upon motion of the State of Maryland to quash the writ and rescind the order issued in the above entitled case on the 11th day of February, 1925, directed to the Judge of the Circuit Court for Harford County, and the Clerk thereof, and to remand the said case to the Circuit Court for Harford County, the counsel for the parties were heard and the proceedings were read and considered.

It is, therefore, this 5th day of May, 1925, ordered by the District Court of the United States for the District of Maryland, that the said motion of the State of Maryland be and the same is hereby overruled, and that the removal of this cause to this Court from the Circuit Court for Harford County, in the State of Maryland, as directed by the said order of this Court dated February 11th, 1925, be and the same is hereby ratified and confirmed.

The United States District Court for the District of Maryland does further certify to the Supreme Court of the

United States that the sole issue before the said District Court of the United States for the District of Maryland, in the said motion to quash and remand filed by the State of Maryland, was the jurisdiction of the said Court to remove this cause to said Court from the Circuit Court for Harford County in the State of Maryland, and that in hereby ordering said removal, the said Court does hereby adjudicate said question of jurisdiction adversely to the State of Maryland.

MORRIS A. SOPER,
United States District Judge.

STIPULATION.

Filed May 5, 1925.

STATE OF MARYLAND
vs.
 ROBERT D. FORD, JOHN M.
 BARTON, E. FRANKLIN ELY,
 WILTON L. STEVENS and
 WILLIAM TRABING.

IN THE
 DISTRICT COURT OF THE
 UNITED STATES
 FOR THE
 DISTRICT OF MARYLAND.

(Indictment for Conspiracy
 to Obstruct Justice.)

It is stipulated by and between the parties hereto that Robert D. Ford, John M. Barton, Wilton L. Stevens and E. Franklin Ely, during the month of November, in the year 1924, and prior to said time, and at the time of the matters and facts charged in the indictment in the Circuit Court for Harford County, were federal prohibition officers, holding a commission under the Commissioner of Internal Revenue and countersigned by the Federal Prohibition Commissioner, in the form following, that is to say:
 "Date No.

THE UNITED STATES.

TREASURY
 DEPARTMENT.

INTERNAL REVENUE
 SERVICE.

This certifies that.....is hereby employed as a Federal Prohibition Officer to act under the authority of and to enforce the National Prohibition Act and Acts supplemental thereto and all Internal Revenue Laws, relating to the manufacture, sale, transportation, control, and taxation of intoxicating liquors, and he is hereby author-

ized to execute and perform all the duties delegated to such officers by law.

Countersigned:

.....
Federal Prohibition
Commissioner.

.....
Commissioner of Internal
Revenue.

This Commission is void if photograph of bearer does not appear above."

And that William Trabing was, at the time of the acts alleged in the indictment in the Circuit Court for Harford County, a chauffeur of the Reliable Transfer Company, engaged and employed by Edmund Budnitz, Federal Prohibition Director of the State of Maryland, in the capacity of chauffeur for the Prohibition Agents above named.

IN THE

Supreme Court of the United States

IN THE MATTER OF THE APPLICATION OF THE
STATE OF MARYLAND FOR A WRIT OF MAN-
DAMUS DIRECTED TO THE HONORABLE,
MORRIS A. SOPER, JUDGE OF THE DISTRICT
COURT FOR THE DISTRICT OF MARYLAND,
AND DIRECTED ALSO TO SAID DISTRICT
COURT.

CASE "B".

EXHIBIT B.

MR. CLERK:

Please file.

THOS. H. ROBINSON,

*Attorney General for the State
of Maryland.*

HERBERT LEVY,

*Asst. Attorney General of the
State of Maryland.*

EXHIBIT B.**RECORD OF PROCEEDINGS OF CIRCUIT COURT FOR
HARFORD COUNTY FILED IN THE DISTRICT
COURT OF THE UNITED STATES FOR THE DIS-
TRICT OF MARYLAND, FEBRUARY 21, 1925.**

STATE OF MARYLAND, HARFORD COUNTY, TO WIT:

At a session of the Circuit Court of the Third Judicial Circuit of the State of Maryland, begun and held for Harford County, at the Court House in the Town of Bel Air, in the same County, on the second Monday of February, it being the ninth day of the same month, in the year of our Lord one thousand nine hundred and twenty-five.

Present:

The Honorable, T. Scott Offutt, Chief Judge,
The Honorable, Frank I. Duncan, Associate Judge,
The Honorable, William H. Harlan, Associate Judge,
The Honorable, Walter W. Preston, Associate Judge,
Isaac W. Thompson, Esq., Sheriff,
D. Gilpin Wilson, Clerk.

Among others were the following proceedings, to wit:

STATE OF MARYLAND	}
vs.	
WILTON L. STEVENS, ROBERT	
D. FORD, E. FRANKLIN ELY,	
JOHN M. BARTON, WILLIAM	
TRABING.	

Be it remembered, that at the present term of this Honorable Court, held as aforesaid, Frederick C. Jones, A.

Lynn Baker, Wilson R. Mitchell, Isaac A. Hoffman, Harry F. Daughton, George K. Livezey, Louis Amrein, Charles W. Walker, William A. Bodt, Harry E. Martin, Hargraves Spalding, T. Norman Harkins, Lawrence E. Bauer, Preston C. Snodgrass, J. Henry Baird, Edward Breidenbaugh, Seth B. Taylor, Harry F. Pyle, Frederick O. Viele, Samuel E. Walker, Harry E. Sheridan, George C. Proctor and John E. Webster, good and lawful men of the County aforesaid, who being empannelled, sworn and charged as the Grand Inquest of the State of Maryland for the body of Harford County, having withdrawn from the Bar of this Honorable Court here did afterwards return and present to this Honorable Court a presentment in the words and form following, to wit:

IN THE CIRCUIT COURT FOR HARFORD COUNTY:

February Term, 1925.

The Grand Inquest of the State of Maryland for the body of Harford County do, on their oath present that Wilton L. Stevens, John M. Barton, Robert D. Ford, E. Franklin Ely and William Trabing, late of Harford County, aforesaid, at County aforesaid, on the twentieth day of November, nineteen hundred and twenty-four, conspired to give false testimony before Coroner's Inquest against the peace, government and dignity of the State.

FRED C. JONES, Foreman.

Witness:

Abraham Woods,
Ralph T. Woods,
James Patterson,
John H. Henson,
John Cook (col.),
Charles Bobbitt.

Whereupon, the State of Maryland, by W. Worthington Hopkins, Esq., State's Attorney for Harford County, prosecuted and sued forth out of this Honorable Court the Writ of the State of Maryland of *Capias ad respondendum* against the said Wilton L. Stevens, Robert D. Ford, E. Franklin Ely, John M. Barton and Willaim Trabing, to the Sheriff of Harford County, in the words and form following:

STATE OF MARYLAND,

To the Sheriff of Harford County—Greeting:

You are hereby commanded to take the bodies of Wilton L. Stevens, John M. Barton, Robert D. Ford, E. Franklin Ely and William Trabing, late of Harford County, if they shall be found in your bailiwick, and that them so taken, you safely keep, so that you have their bodies before the Circuit Court for Harford County, at the Court House in the same County, at once to answer unto the State of Maryland on a presentment and indictment, conspired to give false testimony before Coroner's Inquest contrary to the Act of Assembly in such case made and provided, and against the peace, government and dignity of the State.

Hereof fail not at your peril, and have you then and there this Writ.

WITNESS the Honorable T. Scott Offutt, Chief
Judge of our said Court, the 9th day of Feby.,
(Seal.) 1925. Issued the 10th day of Feby., 1925.

Test: D. G. WILSON, Clerk.

Witness:

Abraham Woods,
Ralph T. Woods,
James Patterson,
John H. Henson,
John Cook (col.),
Charles Bobbitt.

To which said Writ of the State of Maryland of *Capias ad respondendum* (which was delivered to said Sheriff of Harford County to be executed) there has been no Return to this Honorable Court, and the said Wilton L. Stevens, Robert D. Ford, E. Franklin Ely, John M. Barton and William Trabling, as shown by the Records of this Honorable Court, are still at large.

And the said W. Worthington Hopkins, Esq., the State's Attorney for Harford County, exhibits to the Grand Inquest of the State of Maryland, for the body of Harford County, an indictment against the said Wilton L. Stevens, John M. Barton, Robert D. Ford, E. Franklin Ely and William Trabling in the words and form following, to wit:
STATE OF MARYLAND, HARFORD COUNTY, TO WIT:

The Jurors of the State of Maryland, for the body of Harford County, do on their oath present that before and at the time of the commission of the offense by Wilton L. Stevens, Robert D. Ford, John M. Barton, E. Franklin Ely and William Trabling hereinafter alleged to have been committed by them, to wit: on the twentieth day of November, in the year of our Lord nineteen hundred and twenty-four, there was pending a certain inquiry, investigation and inquest before Lewis J. Williams, Esquire, then a Justice of the Peace of the State of Maryland, in and for Harford County aforesaid, then duly commissioned and qualified as such Justice of the Peace as aforesaid; and then duly acting and sitting as a Coroner at the Court House in

Bel Air in said County and before a jury duly summoned and sworn by said Lewis J. Williams, by whom, as such Justice of the Peace as aforesaid, duly acting and sitting then and there as such Coroner as aforesaid, and by said jury so by him duly summoned and sworn for that purpose, the said inquiry, investigation and inquest was then and there being held and conducted for the purpose of ascertaining when, where, how and after what manner one Lawrence Wenger, then lately before found dead in said County, had come to his death in said County.

And that, at the time of the commission of the offense hereinafter alleged to have been committed by the said Wilton L. Stevens, Robert D. Ford, John M. Barton, E. Franklin Ely and William Trabling, to wit: on the said twentieth day of November, in the said year of our Lord nineteen hundred and twenty-four, at the County aforesaid, the said Wilton L. Stevens, Robert D. Ford, John M. Barton, E. Franklin Ely and William Trabling knew and were acquainted with divers matters, facts, circumstances and things material to be inquired into by the said Lewis J. Williams, as such Justice of the Peace as aforesaid, so then and there acting and sitting as such Coroner as aforesaid, and by said jury so summoned and sworn as aforesaid; and touching and concerning the said inquiry, investigation and inquest and the subject matter thereof, all and every of which said matters, facts, circumstances and things it then and there was the duty of the said Wilton L. Stevens, Robert D. Ford, John M. Barton, E. Franklin Ely and William Trabling to make known and reveal to the said Lewis J. Williams, as such Justice of the Peace as aforesaid, so then and there acting and sitting as such Coroner as aforesaid, and to said jury so summoned and sworn as aforesaid; and which the said Wilton L. Stevens, Robert D. Ford, John M. Barton, E. Franklin Ely and William Trabling were then and there required, on behalf of the State of Maryland, by the said Lewis J. Williams, as such Justice

of the Peace as aforesaid, so then and there acting and sitting as such Coroner as aforesaid, to make known, discover and reveal to the said Lewis J. Williams, as such Justice of the Peace as aforesaid, so then and there acting and sitting as such Coroner, as aforesaid, and to said Jury so summoned and sworn as aforesaid.

And that the said Wilton L. Stevens, late of the County aforesaid, the said Robert D. Ford, late of the County aforesaid, the said John M. Barton, late of the County aforesaid, the said E. Franklin Ely, late of the County aforesaid, and the said William Trabing, late of the County aforesaid, being evil disposed persons, and contriving and intending as much as in them lay to pervert the due course of law and justice, and not regarding their said duty in that behalf on the said twentieth day of November, in the year aforesaid, at the County aforesaid, unlawfully did conspire, combine, confederate and agree together and with each other to deceive the said Lewis J. Williams, so then and there being such Justice of the Peace as aforesaid, and so acting and sitting then and there as such Coroner as aforesaid, and said Jury so summoned and sworn as aforesaid, in the premises; and to withhold and conceal from the said Lewis J. Williams, so then and there being such Justice of the Peace as aforesaid, and so then and there acting and sitting as such Coroner as aforesaid, and from said Jury so summoned and sworn as aforesaid, the said matters, facts, circumstances and things; and falsely to represent to the said Lewis J. Williams, so being then and there such Justice of the Peace as aforesaid, and so then and there acting and sitting as such Coroner as aforesaid, and to the said Jury so summoned and sworn as aforesaid, that they and each of them, the said Wilton L. Stevens, Robert D. Ford, John M. Barton, E. Franklin Ely and William Trabing, were ignorant of all the said matters, facts, circumstances and things; and falsely to swear before the said Lewis J. Williams, as such Justice of the

Peace as aforesaid, so then and there acting and sitting as such Coroner, as aforesaid, and before said Jury so summoned and sworn as aforesaid, to the effect last aforesaid; and by such false swearing and divers deceitful, false and indirect means, ways and methods, to perfect and put into effect the said wicked conspiracy, combination, confederacy and agreement; and to procure the said Lewis J. Williams, as such Justice of the Peace as aforesaid, so then and there acting and sitting as such Coroner as aforesaid, and said Jury so summoned and sworn as aforesaid, to make and return a false and erroneous verdict and finding in the premises with regard to the subject matter of the aforesaid inquiry, investigation and inquest; and mutually to aid and assist one another in perfecting and putting in execution the said wicked conspiracy, combination, confederacy and agreement; to the evil and pernicious example of all other persons in the like case offending, and against the peace, government and dignity of the State.

W. WORTHINGTON HOPKINS,
State's Attorney for Harford County.

Whereupon, the said Grand Inquest of the State of Maryland for the Body of Harford County, returned the said Indictment to our Honorable Court here thereon endorsed:

“True Bill.

FRED C. JONES, Foreman.”

And afterwards, to wit, on the 12th day of February, 1925, a Petition, Affidavit and Order of Court issuing out of the Honorable, the United States District Court for the District of Maryland, commanding the transmission of the Record of Proceedings in the case be sent to the Honorable, the United States District Court for the District of Maryland, were received by the Clerk of the Honorable, the

Circuit Court of the Third Judicial Circuit of the State of Maryland, for Harford County, under protest.

STATE OF MARYLAND, HARFORD COUNTY, TO WIT:

I, D. Gilpin Wilson, Clerk of the Circuit Court for Harford County, the same being a Court of Law and Record, hereby certify that the foregoing is a true, full and complete transcript of the Record of Proceedings in the therein entitled case, as the same remains of record in this office.

(Circuit Court Seal.)	IN TESTIMONY WHEREOF I hereto subscribe my name and affix the seal of the Circuit Court for Harford County, this 21st day of February, 1925.
-----------------------------	--

D. GILPIN WILSON,
Clerk of the Circuit Court of the Third
Judicial Circuit of the State of Mary-
land, for Harford County.

Whereupon, the Record of Proceedings is transmitted accordingly.

D. GILPIN WILSON, Clerk.

UNITED STATES OF AMERICA,

DISTRICT OF MARYLAND, to wit:

I, ARTHUR L. SPAMER, Clerk of the District Court for the United States for the District of Maryland, do hereby certify that the foregoing papers comprising Exhibits "A" and "B" are true copies respectively of all the original papers filed on the respective dates set forth in the captions thereto, in the case of State of Maryland versus Robert D. Ford, E. Franklin Ely, John M. Barton, Wilton L. Stevens and William Trabing, No. 7190 Criminal, in the District

Court of the United States for the District of Maryland; and I further certify that the Docket Entries above set forth are truly taken from the record of proceedings in said case.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the seal of said District Court, this 24th day of September, A. D. 1925.

ARTHUR L. SPAMER,
Clerk.

(Seal.)

**CERTIFIED COPY OF DOCKET ENTRIES—CIRCUIT
COURT FOR HARFORD COUNTY.**

STATE OF MARYLAND	}	
vs.		
WILTON L. STEVENS, ROBERT		IN THE CIRCUIT COURT
D. FORD, E. FRANKLIN ELY,		FOR
JOHN M. BARTON, WILLIAM		HARFORD COUNTY.
TRABING.		

Feby. 10, 1925—Present. for Conspiracy filed and Capias
issd. Same day Indictment endorsed "True Bill" filed.

Feby. 12, 1925—Petition and Affidavit of the District
Attorney of the United States District Court for the Dis-
trict of Maryland for Removal and Order of said Court
commanding the Record of Proceedings be sent to said
United States District Court for the District of Maryland
received by the Clerk of this Court under Protest and copy
of same left and filed.

STATE OF MARYLAND, HARFORD COUNTY, SCT:

I hereby certify that the above is a true copy of the
Docket Entries in the above entitled case, as same remains
of record in this office.

In Testimony Whereof, I hereto subscribe my
name and affix the Seal of the Circuit Court
for Harford County, this 11th day of Septem-
ber, 1925.

D. GILPIN WILSON,
Clerk of the Circuit Court
for Harford County.

(Seal.)



18
24 Orig.

Office Supreme Court, U.
F I L E D

OCT 24 1925

WM. R. STANSBURY
CLERK

IN THE

Supreme Court of the United States

STATE OF MARYLAND

versus

**MORRIS A. SOPER, JUDGE OF THE DISTRICT
COURT OF THE UNITED STATES FOR THE
DISTRICT OF MARYLAND, AND THE DIS-
TRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF MARYLAND.**

CASE "B".

**BRIEF IN SUPPORT OF PETITION FOR MAN-
DAMUS ON BEHALF OF THE STATE
OF MARYLAND.**

Mr. Clerk:

Please file:

THOS. H. ROBINSON,
Attorney General of Maryland.

HERBERT LEVY,
Assistant Attorney General of Maryland.



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NOTE: For detailed discussion of questions involved, see brief in support of petition on behalf of the State of Maryland in the case of "State of Maryland vs. Morris A. Soper, Judge of the District Court of the United States for the District of Maryland, and the District Court of the United States for the District of Maryland, **CASE 'A'.**"

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NOTE: For other authorities upon questions involved in this case, see brief in support of petition on behalf of the State of Maryland in the case of "State of Maryland vs. Morris A. Soper, Judge of the District Court of the United States for the District of Maryland, and the District Court of the United States for the District of Maryland, **CASE 'A'.**"



STATE OF MARYLAND

vs.

MORRIS A. SOPER, JUDGE OF
THE DISTRICT COURT OF
THE UNITED STATES FOR
THE DISTRICT OF MARY-
LAND, AND THE DISTRICT
COURT OF THE UNITED
STATES FOR THE DISTRICT
OF MARYLAND.

IN THE
SUPREME COURT
OF THE
UNITED STATES.

CASE "B."

BRIEF IN SUPPORT OF PETITION FOR MAN- DAMUS ON BEHALF OF THE STATE OF MARYLAND.

Statement of the Case.

On the 10th of February, 1925, Robert D. Ford, John M. Barton, E. Franklin Ely, Wilton L. Stevens and William Trabling were indicted in the Circuit Court for Harford County, State of Maryland, for conspiracy to obstruct justice. The indictment charged the unlawful conspiracy, confederation, combination and agreement of said parties to commit perjury before a Coroner's Inquest, held in Harford County, Maryland, on the 20th day of November, 1924, for the purpose of ascertaining when, where, how and after what manner one Lawrence Wenger, found dead on the 19th day of November, 1924, had come to his death in said County, and to conceal from said Inquest their knowledge of the matters, facts, circumstances and things pertinent to the subject matter

of said Inquest, in order to prevent the due course of law and justice.

On the 11th day of February, 1925, the defendants in said indictment, through the United States Attorney for the District of Maryland, filed a petition in the District Court of the United States for the District of Maryland, (Morris A. Soper, Judge), for the removal of said case from the Circuit Court for Harford County to the said District Court, under the provisions of *Section 33 of the Judicial Code*, and for a writ of *habeas corpus cum causa* for that purpose.

The petition alleged that the petitioners were, with the exception of Trabing, Federal Prohibition Agents of the Bureau of Internal Revenue of the Treasury Department of the United States, and, at the time when the conspiracy is alleged to have been committed, were acting under and by authority of the Federal Prohibition Director of the State of Maryland, and that Trabing was acting as chauffeur for said Federal Prohibition Agents, under and by authority of said Federal Prohibition Director of the State of Maryland and of the said Federal Prohibition Agents.

For convenience, however, no distinction will be hereafter made between Trabing and the others. All will be designated and referred to as "Federal Prohibition Agents."

The petition further alleged that at the time when the said conspiracy is alleged to have been committed, the petitioners were in the discharge of their official duties as Federal Prohibition Agents in making and attempting to make an investigation in the discharge of their duty and in protecting themselves in the discharge of their duty, but it denied that they were guilty of the said con-

spiracy. Upon this petition the Court passed an order removing the case and directing the writ of *habeas corpus cum causa* to issue as prayed.

The writ was served and the petitioners were admitted to bail by the District Court of the United States for the District of Maryland.

After the record of the proceedings of the Circuit Court for Harford County was filed in said District Court pursuant to said order of removal, the State of Maryland appeared specially in said District Court and filed a motion to quash the writ and rescind the order of removal. Upon a hearing of said motion, the Court ruled that the petition for removal was defective but granted leave to the petitioners to amend the same.

Thereafter, the petitioners filed an amended petition for removal. The amended petition differed from the original in the following particulars:

(1) It alleged that the petitioners were acting under the authority of, and enforcing not only the National Prohibition Act and acts supplemental thereto, but all internal revenue laws relating to the manufacture, sale, transportation, control and taxation of intoxicating liquors with authority to execute and perform all the duties delegated to such officers by law.

(2) It further alleged, in general terms, that at the time when the conspiracy is alleged to have been committed, the petitioners were engaged in their official duties as Prohibition Officers in making and attempting to make an investigation concerning a violation, not only of the National Prohibition Act, but of other internal revenue laws.

(3) It set out in great detail the acts and movements of the petitioners on the day, and the day before, the conspiracy is alleged to have been committed. It set forth that after the petitioners had completed an investigation in Harford County, Maryland, of a violation of the National Prohibition Law, they started to return to their automobile for the purpose of returning to Baltimore to report to the office of the Federal Prohibition Director concerning the results of their investigation, when they discovered a man, whom they afterwards learned to be one Lawrence Wenger, mortally wounded, and lying beside the path along which they were walking. They carried the wounded man to their automobile and took him to Jarrettsville, Maryland, and thence to Belair, Maryland, for the purpose of obtaining medical attention for him and finally placed the said Wenger in charge of a doctor in Belair, who pronounced him dead. They then removed the body to an undertaker's establishment in Belair. They then proceeded to the State's Attorney's office in Belair, and related the facts aforesaid to the State's Attorney, whereupon they were placed under arrest by the Sheriff of Harford County at the instance of the State's Attorney and were confined in the Harford County Jail until the following morning, November 20th, 1924. On the morning of November 20th, 1924, they were taken by the Sheriff and State's Attorney, in company with a number of men who that afternoon served upon the Coroner's Jury, mentioned in the indictment, and in company with two Baltimore City Police Headquarters detectives, to the scene of their investigation of the previous day. There they related the facts concerning their investigation and their finding of the said Lawrence Wenger on November 19th, and then and there went over the scene of said occurrences "relating freely and without reservation the events which took place November 19th, in accordance with their duty as investigating and

reporting officers of the Federal Government, and in compliance with their duties as Federal Prohibition officers. Likewise on the afternoon of November 20th, your petitioners were called before the Coroner's Inquest heretofore described in the indictment, and freely and without reservation, in accordance with their duty as investigating and reporting officers of the Federal Government, and acting under the direction of the Maryland Federal Prohibition Director, related the facts aforementioned."

(4) The removal was sought under *Section 28 of Title II of the National Prohibition Act*, as well as under *Section 33 of the Judicial Code*.

Upon the filing of the amended petition, the State of Maryland again appeared specially and again moved to quash and remand. On May 5th, 1925, by order of the District Court, this motion to quash and remand was overruled, and the original order removing the case was ratified and confirmed.

In this proceeding the State of Maryland asks this Court to entertain a petition for mandamus, directed to Morris A. Soper, Judge of the District Court of the United States for the District of Maryland, and the said District Court to compel the said Judge and said Court to remand the said prosecution to the Circuit Court for Harford County, Maryland.

ARGUMENT.

The problems involved in this case are discussed at length in the brief filed on behalf of the State of Maryland, in support of a petition for mandamus, filed in this Court simultaneously with this petition, in the case of "*State of Maryland vs. Morris A. Soper, Judge of the District Court of the United States for the District of*

Maryland, and the District Court of the United States for the District of Maryland, CASE 'A'."

Your Honors are respectfully referred to said brief for a detailed statement of the legal propositions involved in this case. It only remains to point out the peculiar features of this case, which distinguish it from the other.

The offense of conspiracy to obstruct the due and orderly administration of justice in the judicial tribunals of a sovereign power belongs peculiarly to the government under which those tribunals have been created and exist.

Here the crime charged is an unlawful conspiracy to give false testimony in, and to conceal material facts from an inquest held before a Justice of the Peace, a State officer, acting in the capacity of a Coroner, a State office, in a purely State proceeding, provided for by State laws to determine when, where, how and after what manner a citizen of a State had come to his death in a county of the State.

The very nature of the proceeding and the character of the officer before whom it was conducted clearly negative the contention that any act done by the Federal Prohibition Officers in connection with said proceeding was in accordance with their duty "as investigating and reporting officers of the Federal Government and in compliance with their duty as Federal Prohibition Officers."

Certainly they were under no obligation under any law of the United States to report any investigation made by them to the Coroner and Jury, sitting as the Inquest. Their petition recites that they were on their way to Baltimore to report to the office of the Federal

Prohibition Director concerning the results of their investigation. If any reports were required of them, it was their duty to make the same to their *superior Federal Officer* and not to a State officer in a State proceeding conducted under a State law for the purpose of determining a purely State matter.

Unless the words "act done under color of his office or any such law" in *Section 33 of the Judicial Code* are to be deprived of all meaning and effect, they clearly render the provisions of that statute inapplicable to the case at bar. If it can be claimed that a report made to a Coroner's Inquest is a report made under color of office or of a revenue law, then an action arising out of any slanderous statement made by a revenue officer in the course of his private and personal transactions can also be removed.

If the prosecution in this case can be removed, then any action or prosecution, no matter how personal its nature or how unconnected with the official capacity of the revenue officer, can be removed.

Will the Court accept the mere statement that the officers testified before the Coroner's Inquest "in accordance with their duty as investigating and reporting officers of the Federal Government and acting under the Maryland Federal Prohibition Director" as sufficient to bring the prosecution within the meaning of the removal act, irrespective of the total irrelevancy thereof to any conceivable duty required of the officer under any revenue law? The very statement of the facts upon which the prosecution in this case is based is a disavowal of the jurisdiction of the Federal Court.

The essence of the offense charged against the officers was a conspiracy to commit *perjury* before the Coroner's Inquest.

In the case of *Thomas vs. Loney*, 134 U. S. 372, 33 L. ed. 949, Loney was arrested on a State warrant upon a complaint charging him with wilful perjury committed in giving his depositions as a witness before a Notary Public of the City of Richmond in a case of a contested election of a member of the House of Representatives of the United States. He petitioned the Federal Court for a writ of habeas corpus, upon the ground that the offense charged against him was punishable only under *Section 5392 of the Revised Statutes*, and was within the exclusive cognizance of the Courts of the United States. He was released.

Mr. Justice Gray, in delivering the opinion of the Court, said:

"But the power of punishing a witness for testifying falsely in a judicial proceeding belongs peculiarly to the government in whose tribunals that proceeding is had. It is essential to the impartial and efficient administration of justice in the tribunals of the nation, that witnesses should be able to testify freely before them, unrestrained by legislation of the State, or by fear of punishment in the State Courts. The administration of justice in the national tribunals would be greatly embarrassed and impeded if a witness testifying before a Court of the United States, or upon a contested election of a member of Congress, were liable to prosecution and punishment in the Courts of the State upon a charge of perjury, preferred by a disappointed suitor or contestant, or instigated by local passion or prejudice.

"A witness who gives his testimony, pursuant to the Constitution and laws of the United States, in a case pending in a Court or other judicial tribunal of the United States, whether he testifies in the presence of that tribunal, or before any magistrate or officer (either of the nation or of the State) designated by Act of Congress for the purpose, is

accountable for the truth of his testimony to the United States only; and perjury committed in so testifying is an offense against the public justice of the United States and within the exclusive jurisdiction of the Courts of the United States, and cannot therefore be punished in the Courts of Virginia.
 * * *.” (Italics ours.)

If a perjury committed in pursuance of an obligation imposed by Federal law is exclusively a Federal offense, cognizable and punishable only by the Federal Courts, then the converse must be true, namely, a perjury committed in a State proceeding under a State law is within the exclusive jurisdiction of the State tribunals, and is cognizable and punishable only by the State sovereignty. In other words, if in this case the obligation of testifying before the Coroner's Inquest was, as alleged, a duty imposed upon the Federal Prohibition Agents as investigating and reporting officers of the Federal Government, or was required of them under any Federal Law or could be required of them by the Maryland Federal Prohibition Director, in the performance of any obligation imposed upon him by any Federal Law, then an indictment for such offense could have been found only in the Federal Tribunals, and such offense could have been punished only in the Federal Court. The Grand Jury for Harford County would have had no jurisdiction to indict the Federal Prohibition Agents for such an offense. The whole proceeding in the State Courts would have been *coram non judice* and the agents could have been released on *habeas corpus*, as was done in *Thomas vs. Loney, supra*.

But no such claim is made in this case. It is not contended that the conspiracy charged is an offense under the Federal Laws or that the State tribunals had no jurisdiction to prosecute the agents therefor. The sole

basis for the assumption of jurisdiction by the Federal Court is the Removal Statute.

We submit that in view of the peculiar irrelevancy of the offense to any duties imposed, or which could have been imposed upon the agents under the Federal Law, it would be utterly inconsistent with the plain meaning of the law to permit the removal. The very incongruity between the nature of the offense and the description in the law of the prosecutions removable precludes such action.

CONCLUSION.

We respectfully submit that the prosecution for conspiracy, of the State of Maryland against the Federal Prohibition Agents, was unlawfully removed by Judge Soper and the District Court of the United States for the District of Maryland, and that this Court should issue the writ of mandamus to compel the remand of said case to the Circuit Court for Harford County.

Respectfully submitted,

THOS. H. ROBINSON,
Attorney General of Maryland.

HERBERT LEVY,
Assistant Attorney General of Maryland.

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NO. 24, ORIGINAL.

Office Supreme Court,
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WM. R. STANSE
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IN THE
Supreme Court of the United States.

STATE OF MARYLAND

versus

MORRIS A. SOPER, JUDGE OF THE DISTRICT
COURT OF THE UNITED STATES FOR THE
DISTRICT OF MARYLAND, AND THE DIS-
TRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF MARYLAND.

CASE "B."

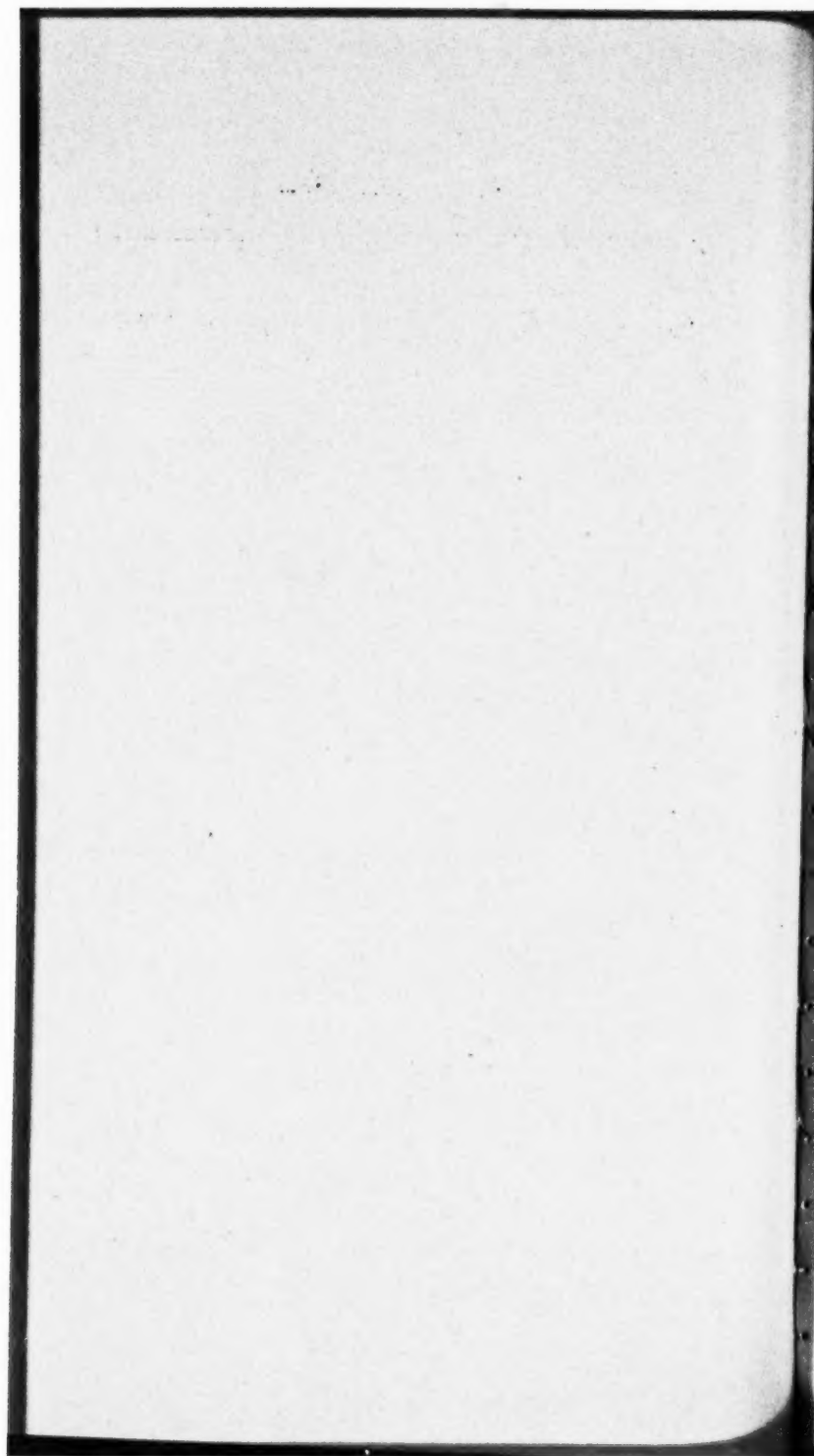
REPLICATION.

MR. CLERK:

Please file.

THOMAS H. ROBINSON,
Attorney General of Maryland,

HERBERT LEVY,
*Assistant Attorney General of
Maryland,
Attorneys for the State of
Maryland.*



IN THE
Supreme Court of the United States

OCTOBER TERM, 1925.

No. 24, ORIGINAL.

STATE OF MARYLAND

versus

MORRIS A. SOPER, JUDGE OF THE DISTRICT
COURT OF THE UNITED STATES FOR THE
DISTRICT OF MARYLAND, AND THE DIS-
TRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF MARYLAND.

CASE "B."

REPLICATION.

And the said State of Maryland says that the matters and things set forth and alleged in the answer and return of the said Morris A. Soper, Judge of the District Court of the United States for the District of Maryland, and of the District Court of the United States for the District of Maryland, to the rule on them laid by this Honorable Court to show cause why a writ of mandamus should not issue in accordance with the prayer of the petition of the said State of Maryland, **SHOW NO CAUSE** why the writ of mandamus should not be issued by this Court, forbidding and preventing the said Morris A. Soper, Judge of the District Court of the United



States for the District of Maryland and the said District Court, from taking cognizance of the case entitled "State of Maryland vs. Robert D. Ford, John M. Barton, E. Franklin Ely, Wilton L. Stevens and William Trabing," and from any, all and every act connected with the trial of said case, and commanding them to remand the said case to the Circuit Court for Harford County, and to redeliver to the jailor of said Harford County, the bodies of the said Robert D. Ford, John M. Barton, E. Franklin Ely, Wilton L. Stevens and William Trabing, to be dealt with according to the laws of said State.

WHEREFORE, the said State of Maryland prays this Honorable Court to issue its writ of mandamus to the said Morris A. Soper, District Judge, as aforesaid, and to the said District Court, commanding them to do so.

THOMAS H. ROBINSON,
Attorney General of Maryland,

HERBERT LEVY,
*Assistant Attorney General of
Maryland,
Attorneys for the State of
Maryland.*

In the Supreme Court of the United States

OCTOBER TERM, 1925

No. 24, ORIGINAL

EX PARTE: IN THE MATTER OF THE STATE OF
MARYLAND

CASE " B "

*PETITION FOR A WRIT OF MANDAMUS TO THE DISTRICT
COURT FOR THE DISTRICT OF MARYLAND*

RETURN TO RULE

The answer and return of Morris A. Soper, Judge of the District Court of the United States for the District of Maryland, and of the District Court of the United States for the District of Maryland, to the rule on them laid by this Honorable Court to show cause why a writ of mandamus should not issue in accordance with the prayer of the petition.

The respondents, answering, say:

(1) All the acts of which petitioner complains were the acts of the respondent, the District Court of the United States for the District of Maryland. Of this Court the respondent, Morris A. Soper, at all times herein material, was, and still is, the duly appointed judge.

(2) On February 11, 1925, a petition was presented to the said District Court by Robert D. Ford, John M. Barton, E. Frank Ely, Wilton L. Stevens, and William Trabing. In it the petitioners set forth that they had been indicted on February 10, 1925, in the Criminal Court of the State of Maryland for Harford County, for the crime of conspiracy to obstruct justice in connection with the investigation on or about November 20, 1924, and the prosecution of the said defendants for the alleged murder of Lawrence Wenger; that the petitioner Trabing was a chauffeur engaged and employed by the Federal Prohibition Director of the State of Maryland, and that the other four petitioners were officers of the Internal Revenue Service of the United States; that the acts done by Trabing at the time of the alleged murder were done while he was acting under the authority of the Prohibition Director and of the other four petitioners and in discharge of his duty as a helper to the other petitioners; that the acts done by the other four petitioners were done in the discharge of their official duties, and that the prosecution in the State Court was on account of acts alleged to have been done in the course of the performance of the petitioners' duty as Federal Prohibition Agents. The petitioners prayed that the prosecution be removed to the District Court of the United States, under Section 33 of the Judicial Code. The contents of this petition are set forth in Exhibit

A to the petition of the State of Maryland for a writ of mandamus, at pages 18-21.

(3) Upon consideration of this petition it was ordered by the District Court that writs of certiorari and habeas corpus cum causa should issue to remove the prosecution from the State Court. In obedience to these writs the record in the State Court was, on February 21st, 1925, transmitted under protest to the District Court, and the petitioners were admitted to bail by the District Court.

(4) On February 18th, 1925, the State of Maryland, appearing specially in the District Court, moved to quash the writ and rescind the order of removal, and moved also to remand the cause to the State Court, for reasons set forth in the motion. This motion is fully set forth in Exhibit A to the petition of the State of Maryland for a writ of mandamus, at pages 25-26.

(5) After hearing full argument upon this motion the District Court, on March 17th, 1925, granted leave to the United States, on behalf of the accused, to amend the petition for removal.

(6) On March 31, 1925, pursuant to the leave granted, an amended petition for removal was filed. This petition set forth in full all the attendant circumstances and details surrounding the indictment for conspiracy which the petitioners sought to have removed from the State Court. The amended petition recited these facts: On November 19th, 1924, the petitioners had proceeded, under orders, to discover and destroy an illicit still in the woods

near the village of Madonna, Maryland. After destroying this still, the petitioners started to return to their car, when they found the deceased, Lawrence Wenger, lying mortally wounded some 400 or 500 yards from the site of the still. They took him in their car and endeavored to obtain medical aid. At length they found a physician, who pronounced Wenger dead. The petitioners then reported the affair to the State's Attorney, who forthwith had them arrested. They spent that night in jail. The next day they repeated their account to the State officials and to the Coroner's Jury. In the evening they were released on bail. Their indictment, set forth at length in the petition, followed later. The petitioners further alleged:

That during November nineteenth and twentieth, nineteen hundred and twenty-four, your petitioners did discuss together the facts relating to the incidents aforementioned, but at no time did they combine nor conspire to obstruct justice as charged in said indictment.

The petition concluded by stating:

The said indictment is now pending in the Circuit Court for Harford County and is a criminal prosecution on account of acts alleged to have been done by your petitioners at a time when they were engaged in the performance of their duties as Federal Prohibition Officers and chauffeur for Federal Prohibition Officers as set forth in foregoing paragraphs.

Removal of the prosecution was again prayed under Section 33 of the Judicial Code. The contents of this petition are fully set forth in Exhibit A to the petition of the State of Maryland for a writ of mandamus at pages 28-37.

(7) Upon consideration of this amended petition it was again ordered by the District Court that writs of certiorari and habeas corpus cum causa should issue to remove the prosecution from the State Court.

(8) On April 11, 1925, the State of Maryland, again appearing specially, moved to quash the writ and rescind the order of removal, and moved also to remand the cause to the State Court. The reasons set forth in support of this motion were:

(1) Because the allegations of the second paragraph of the amended petition are untrue.

(2) Because the allegations of the petition filed in this case do not disclose a state of facts entitling the petitioners to have said writ issued, or the charge against them removed into this Court.

(3) Because the allegations set forth in said petition are contradictory, evasive, founded on hearsay, and in part untrue.

(4) Because the issuance of said writ upon the allegations of said petition and attached certificate of counsel is beyond the power and jurisdiction of this Court as limited by the Constitution and laws of the United States.

(5) Because the said writ, if allowed to stand, constitutes an interference by this Court with the due and orderly administration of justice in the Circuit Court for Harford County contrary to the Constitution and laws of the United States.

(6) Because there is no allegation in said petition that authorizes this Court to issue any writ whatsoever against the Judge or the Clerk of the Circuit Court for Harford County.

(7) Because the crime of conspiracy to obstruct justice against the laws of the State of Maryland for which the said Robert D. Ford, John M. Barton, E. Franklin Ely, Wilton L. Stevens, and William Trabling have been indicted in the Circuit Court for Harford County could not possibly have any causal connection with the duties of the said Robert D. Ford, John M. Barton, E. Franklin Ely, Wilton L. Stevens, and William Trabling as Federal Prohibition Agents of the Bureau of Internal Revenue of the Treasury Department of the United States.

(8) Because it is inconceivable that in the discharge of their duties as Federal Prohibition Agents of the Bureau of Internal Revenue of the Treasury Department of the United States it would be necessary for the said Robert D. Ford, John M. Barton, E. Franklin Ely, Wilton L. Stevens, and William Trabling to commit the crime of conspiracy to obstruct justice against the laws of the State of Maryland.

(9) And for other good and sufficient reasons to be shown at the hearing.

The motion is set forth in full in Exhibit A to the petition of the State of Maryland for a writ of mandamus at pages 39-41.

(9) On May 5th, 1925, after hearing full argument, the District Court overruled the motion of the State of Maryland and ratified its former order of February 11th, 1925, removing the prosecution from the State Court.

(10) In ordering the removal of the prosecution, and in denying the motion to remand, the District Court was of the opinion that the petitioners were entitled to removal under that portion of Section 33 of the Judicial Code which authorizes removal—

when any civil suit or criminal prosecution is commenced in any court of a State against any officer appointed under or acting by authority of any revenue law of the United States now or hereafter enacted, or against any person acting under or by authority of any such officer, on account of any act done under color of his office or of any such law, or on account of any right, title, or authority claimed by such officer or other person under any such law.

And the District Court was further of the opinion that the petitioners were entitled to removal, even in the event that they were not "revenue officers," by virtue of Section 28 of the

National Prohibition Act (Act of Oct. 28, 1919, c. 85, 41 Stat. 305, 316), which provides:

The commissioner, his assistants, agents, and inspectors, and all other officers of the United States, whose duty it is to enforce criminal laws, shall have all the power *and protection* in the enforcement of this Act or any provisions thereof which is conferred by law for the enforcement of existing laws relating to the manufacture or sale of intoxicating liquors under the law of the United States.

(11) The District Court was further of the opinion that the petitioners, at the time of the acts which gave rise to this indictment, were acting in the performance of their official duties in the enforcement of the National Prohibition Act and of other laws of the United States relating to the manufacture of intoxicating liquors, and in the performance of their duty as officers of the United States in making an investigation concerning a violation of the National Prohibition Act and of the Internal Revenue Laws (particularly Revised Statutes 3257-3260, 3276, 3278, 3281, and 3282), and in reporting the results of the said investigation.

(12) The District Court was further of the opinion that the facts set forth in the amended petition clearly disclosed that a prosecution had been commenced against the petitioners on account of acts done under color of their office and of the

revenue and prohibition laws of the United States, notwithstanding that the petitioners did not admit, but on the contrary expressly denied, having combined or conspired to obstruct justice as charged in the indictment.

(13) The District Court therefore adjudged that, under the facts of the case, it possessed ample jurisdiction to order the removal of the prosecution from the State Court and ample jurisdiction to proceed with the trial of the cause, which it intends to do.

(14) The respondents assert that upon the record established by the amended petition for removal and by the motion of the State of Maryland to remand the District Court had lawful jurisdiction to order the removal of the prosecution. In deciding upon the questions of law and fact raised by the amended petition for removal the District Court acted in the exercise of its judicial discretion and within the bounds of its lawful jurisdiction. And the respondents deny that the action of the District Court was a gross violation of the Constitution and laws of the United States or of the Constitution and laws of the State of Maryland. And the respondents deny that the District Court has either transcended its jurisdiction or usurped the jurisdiction of the State of Maryland.

And now these respondents, having made return to and fully answered the rule upon them laid, humbly pray that the rule may be discharged, and

that the petition of the State of Maryland may be dismissed.

Nevertheless, the respondents respectfully submit to and will abide the judgment of this Honorable Court and will enforce, by proper orders or action, any direction given by this Honorable Court in the premises.

MORRIS A. SOPER,

*Judge of the District Court of the United
States for the District of Maryland.*

WILLIAM D. MITCHELL,

Solicitor General.

WILLIAM J. DONOVAN,

*Assistant to the Attorney General,
Counsel for the Respondents.*

UNITED STATES OF AMERICA,

District of Maryland, ss:

Before me, Arthur L. Spamer, Clerk of the District Court of the United States for the District of Maryland, personally appeared on this day Morris A. Soper, Judge of the said Court, whose name is signed to the foregoing answer and return, who, being duly sworn by me, says that the same is true to the best of his knowledge, information, and belief.

Given under my hand and the seal of the said Court, this 13th day of November, 1925.

[SEAL.]

ARTHUR L. SPAMER,

*Clerk of the District Court of the United
States for the District of Maryland.*

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In the Supreme Court of the United States

OCTOBER TERM, 1925

No. 24, Original

EX PARTE: IN THE MATTER OF THE STATE OF
MARYLAND
CASE " B "

*PETITION FOR A WRIT OF MANDAMUS TO THE DISTRICT
COURT OF THE UNITED STATES FOR THE DISTRICT OF
MARYLAND*

**BRIEF FOR RESPONDENTS IN SUPPORT OF RETURN TO
THE RULE**

GROUND'S OF JURISDICTION

This case, like Nos. 23 and 25, Original, is a petition by the State of Maryland for a writ of mandamus to the District Court of the United States for the District of Maryland. The jurisdiction of this Court is invoked under Section 234 of the Judicial Code (Act of March 3, 1911, c. 231, 36 Stat. 1087, 1156).

On October 12th, 1925, this Court granted a rule to show cause why a peremptory writ should not issue. The rule was made returnable on or before November 16th, 1925.

STATEMENT

The purpose of the petition is to compel the District Court to remand to the Circuit Court of the State for Harford County an indictment charging four Federal Prohibition Agents and their chauffeur with the crime of conspiracy to obstruct justice. The same five persons are also the objects of a prosecution for murder, which gives rise to Case A. (Original, No. 23.)

Most of the facts in the present case have been already set forth in the respondent's brief in Case A, at pages 2-5. For convenience, they will be briefly recapitulated.

Four of the defendants (Ford, Barton, Ely, and Stevens) were duly appointed Federal Prohibition Officers. Their commissions empowered them—

to act under the authority of and to enforce the National Prohibition Act and Acts supplemental thereto *and all Internal Revenue Laws, relating to the manufacture, sale, transportation, control, and taxation of intoxicating liquors* * * * and to execute and perform all the duties delegated to such officers by law. (Exhibit A to Petition of the State of Maryland, pp. 44-45.)

The fifth defendant, Trabing, was a chauffeur. During the period covered by the indictment he was in the employ of the Federal Prohibition Director for the State of Maryland and was acting as chauffeur and helper to the other four defendants.

(Exhibit A to Petition of the State of Maryland, p. 45.)

On November 19th, 1924, the defendants were ordered by the Federal Prohibition Director for Maryland to investigate the alleged unlawful distilling of liquor on an unoccupied farm near the village of Madonna, Maryland. They went there by motor, arriving shortly after noon, and discovered in a secluded valley the materials for illicit distilling. They hid themselves in the woods. Soon afterwards a number of men came up, carrying a still. When the officers made their presence known, the men dropped the still and fled. The officers pursued but failed to arrest anyone. They thereupon returned to the still, destroyed the materials, and proceeded back to their car to return to Baltimore and report the affair to their superior. On their way to the car, about 400 or 500 yards from the site of the still, they found a man (Wenger) lying mortally wounded. They picked him up and took him in their car to Jarrettsville and thence to Bel Air in search of a doctor. By the time one was found, the man was dead. The officers then at once reported the matter to the State's Attorney in Bel Air. Upon learning that his informants were Prohibition Officers, the State's Attorney at once ordered all five to be placed under arrest. They were confined in the local jail that night. The next day they gave further infor-

mation to the State officials and to the Coroner's Jury. The charge of conspiracy which gives rise to the present case was predicated upon an alleged agreement by the defendants to withhold material testimony from the Coroner's Jury. On the evening of November 20th the defendants were released on bail at the instance of the **United States Attorney**. (Exhibit A to petition of the State of Maryland, pp. 33-35.)

In February, 1925, an indictment against the defendants for conspiracy to obstruct justice was returned by the grand jury of the State to the Circuit Court for Harford County. The defendants petitioned for removal of the cause, under Section 33 of the Judicial Code. Removal was granted. Subsequently the State of Maryland moved to quash the order of removal and to remand the prosecution to the State Court. After argument upon this motion, leave was granted to amend the petition for removal. The petition was accordingly amended to set forth in greater detail all the circumstances surrounding the indictment. Proper allegations were included, stating that the defendants were Federal officers, and that they had been acting in the discharge of their duties at the time when the alleged conspiracy was formed. The petition, however, directly denied that the defendants were guilty of the conspiracy, saying:

That during November nineteenth and twentieth, nineteen hundred and twenty-

four, your petitioners did discuss together the facts relating to the incidents aforementioned, but at no time did they combine nor conspire to obstruct justice as charged in said indictment.

The petitioners likewise stated that they had "freely and without reservation, in accordance with their duty as investigating and reporting officers of the Federal Government and acting under the direction of the Maryland Federal Prohibition Director, related the facts aforementioned" to the Coroner's Jury. The petition alleged that the indictment for conspiracy was—

a criminal prosecution on account of acts alleged to have been done by your petitioners at a time when they were engaged in the performance of their duties as Federal Prohibition Officers and chauffeur for Federal Prohibition Officers as set forth in foregoing paragraphs.

Upon this amended petition, removal was granted. The State of Maryland again moved to quash the order of removal and to remand the cause. Its motion was denied. To compel the District Court to remand the cause, the State has now petitioned for a writ of mandamus from this Court.

ARGUMENT**SUMMARY**

I. THE PROSECUTION FOR CONSPIRACY TO OBSTRUCT JUSTICE WAS PROPERLY REMOVABLE, NOTWITHSTANDING THAT THE DEFENDANTS EXPRESSLY DENIED HAVING CONSPIRED.

II. THE DECISION OF THE DISTRICT COURT GRANTING THE PETITION FOR REMOVAL, AND DENYING THE MOTION TO REMAND, WAS AN EXERCISE OF LAWFUL JUDICIAL DISCRETION, AND CAN NOT BE CONTROLLED BY MANDAMUS.

I

THE PROSECUTION FOR CONSPIRACY TO OBSTRUCT JUSTICE WAS PROPERLY REMOVABLE, NOTWITHSTANDING THAT THE DEFENDANTS EXPRESSLY DENIED HAVING CONSPIRED.

Most of the questions of law arising in this case have been already discussed in the respondents' brief in Case A (No. 23, Original). Points I and II of that brief, in particular, dealt with the application of Section 33 of the Judicial Code and Section 28 of the National Prohibition Act to prosecutions against Federal Prohibition Agents. It is unnecessary to repeat in the present brief the argument on those points.

A few additional points, however, which did not arise in Case A, arise in this case, and must now be briefly considered.

Counsel for the State of Maryland strenuously urge that the indictment in the present case can not be removed, because the crime of conspiracy to obstruct justice is peculiarly a crime against the

sovereignty of the State, and because that crime can have no possible connection with the official duties of Federal officers. The argument is summarized in the State's two motions made in the District Court, to remand the present cause (Exhibit A to Petition for Mandamus, at pp. 26, 40):

Because it is inconceivable that in the discharge of their duties as Federal Prohibition Agents of the Bureau of Internal Revenue of the Treasury Department of the United States it would be necessary for the said Robert D. Ford, John M. Barton, E. Franklin Ely, Wilton L. Stevens, and William Trabling to commit the crime of conspiracy to obstruct justice against the laws of the State of Maryland.

It may be quite true that the laws of the United States do not authorize or require its officers to conspire to obstruct the justice of any State. But neither do the laws of the United States require its officers to commit murder. Yet this Court has declared that "even the most unquestionable and most universally applicable of State laws, such as those concerning murder," will not be allowed to control the conduct of Federal officers in certain cases. *Johnson v. Maryland*, 254 U. S. 51. And in numberless instances Federal officers, accused in the State courts of murder, have been removed for trial to the Federal courts, or have even been released on *habeas corpus* without having to stand any trial at all.

In re Neagle, 135 U. S. 1.

Davis v. South Carolina, 107 U. S. 597.

Tennessee v. Davis, 100 U. S. 257.

Massachusetts v. Bogan, 285 Fed. 668.

Florida v. Tooker, 283 Fed. 845.

North Carolina v. Kirkpatrick, 42 Fed. 689.

Georgia v. Port, 3 Fed. 117.

Georgia v. O'Grady, Fed. Cas. No. 5352.

Where a Federal officer held in State custody claims the protection of the Federal Court, either by petition for *habeas corpus*, or by petition for removal, the court may look behind the actual indictment to ascertain whether the act was really done under color of Federal authority.

In re Neagle, 135 U. S. 1.

Virginia v. Felts, 133 Fed. 85.

Virginia v. De Hart, 119 Fed. 626.

Ex parte Jenkins, Fed. Cas. No. 7259.

Removal has been granted in many cases and upon an almost endless variety of charges. The following cases will serve as illustrations:

Findley v. Satterfield, Fed. Cas. No. 4792.

Virginia v. Felts, 133 Fed. 85.

Virginia v. De Hart, 119 Fed. 626.

Delaware v. Emerson, 8 Fed. 411.

Illinois v. Moody (unreported. See Appendix to Respondents' Brief in No. 23 Original, Case A).

Virginia v. Bingham, 88 Fed. 561.

Buttner v. Miller, Fed. Cas. No. 2254.

Warner v. Fowler, Fed. Cas. No. 17182.

It must be remembered, moreover, that in the case at bar, the accused, in their petition for removal, specifically denied that they had ever conspired. It is submitted that on this issue they are entitled to be tried in the Federal Court. It is not necessary for them to admit having done the act charged, in order to obtain removal of their cause. Such an admission in the case at bar would be a complete admission of guilt, which could presumably be used against them at their trial. To compel such an admission, it is submitted, would be a violation of the privilege against self-incrimination, *Boyd v. United States*, 116 U. S. 616. It would, in fact, leave nothing for either the Federal or the State court to try.

The question as to the necessity of an admission of the act charged has already been treated at length in the respondents' brief in Case A, at pages 20-27. Reference is made to the discussion there given and to the authorities there cited, particularly:

Tennessee v. Davis, 100 U. S. 257.

Alabama v. Peak, 252 Fed. 306.

Oregon v. Wood, 268 Fed. 975.

The purpose of the removal statute, as recognized by this Court in *Tennessee v. Davis*, is twofold—first, to protect the functions of the Federal Government from being hindered by the possible unfriendly action of States and to prevent its officers from being withdrawn from their duty and held in confinement by State authorities; and, sec-

ond, to protect the officers themselves. Both of these purposes can be defeated, as well by indictments for acts which the officers deny altogether, as by indictments for acts which the officers admit having done, but for which they claim justification under Federal law.

Counsel for the State of Maryland argue that at the time of the conspiracy here alleged the accused officers were in no sense acting in their official capacity. Their duty was discharged, it is said, when they destroyed the still, and at the time of the conspiracy they were lodged in the Maryland jail. And it is therefore argued that the indictment for conspiracy has no reasonable connection with their acts done under Federal authority.

But how did the officers come to be in jail? If they had not been engaged in the performance of their duties as Federal officers, they would never have been there. When they found Wenger's body, they had just come from performing their duty and were on their way back to report officially to their superior. At that time they were still acting in their official capacity. *United States v. Gleason*, 1 Wool. C. C. 128. In immediately seeking for a physician and in reporting Wenger's death at once to the State's Attorney, they were doing the only reasonable act which could be expected of them, both as public officers and as private citizens. But, as their petition alleges, the State's Attorney, "on being informed by them that your petitioners

* * * were prohibition officers," ordered them to be at once placed under arrest.

If they had not discovered Wenger and reported his murder, there would have been no need for them to testify before the Coroner's jury, and there would have been no occasion for any charge of conspiracy. The two charges, it is submitted, are so closely inter-related that they can not properly be separated. The charge of murder gave rise to the charge of conspiracy. If the former charge is removable to the Federal court, it is submitted that the latter should be removable also.

Considerable danger would be involved in a contrary holding. If charges of murder alleged to have been committed by Federal officers are removable, and charges of conspiracy and similar offenses are not removable, an obvious expedient would suggest itself. In localities where the administration of particular Federal laws is unpopular, Federal officers need no longer be dragged before hostile State tribunals on charges such as murder, on which they may successfully claim removal and plead self-defense. The charge can readily be altered to "conspiracy" or to some other crime, which the accused officers deny having committed at all, but on which it will be clear that removal can not be obtained. The actual charge will serve merely as a cloak to obtain the desired end, namely, incarceration of an unpopular officer. In this way the functions of the Federal Government may be

harassed or impeded and its officers withdrawn from their duty as effectively as by prosecution for homicide actually committed in self-defense. This method may easily become as effective as out-and-out nullification of Federal laws.

It is not suggested that any such expedient has been adopted by the prosecuting officers of Maryland in the present case. But it must be remembered that the charge of conspiracy is bound up with the charge of murder, and that the same train of circumstances led up to both. It is submitted that the case can not be disposed of upon the simple theory that Federal officers can never be called upon to commit "conspiracy" in the abstract. The name given to the charge is immaterial. The Court must look behind the name to the actual circumstances under which it arose. Judged by this test, it is submitted that the present charge of conspiracy bears a direct relation to the acts done by the accused "under color of their office" and "under color of the revenue laws of the United States." And if that is true, then the prosecution was properly removable to the Federal Court.

Moreover, it must be remembered that it is "*color of office*" and "*color of the law*" which the statute makes ground for removal of the cause. "*Color of office*" covers something which may prove insufficient as a defense, as well as something which may prove sufficient. (Bouvier, L. D., and cases cited in respondents' brief in Case A, at pp. 26, 27.) The removal statute on this point differs sharply

from the statute which confers upon Federal officers the right to be discharged upon *habeas corpus*. That statute (Rev. Stats. 753) says nothing of "color of office." It grants the privilege of discharge upon *habeas corpus* only where the accused is in custody—

for an act done or omitted in pursuance of a law of the United States.

"Color of office" in that case is not enough. The accused can not show merely that he is in custody for an act which he claims was done under color of his office or of the law. He must allege that he is in custody for an act which was actually done in pursuance of the law, and he must support his allegations by proof.

In the removal statute (Section 33 of the Judicial Code), on the other hand, such proof is not needed. The statute authorizes removal—

when the acts of the defendant complained of were done, or *claimed* to have been done, in the discharge of his duty as a Federal officer. It makes such a *claim* a basis for the assumption of Federal jurisdiction of the case, and for retaining it, at least until the *claim* proves unfounded. *Tennessee v. Davis*, 100 U. S. 257, 261.

The reason for the distinction is clear. When a Federal officer is released on *habeas corpus* under Rev. Stats. 753, the case is ended. He is finally discharged from custody "without a stain on his character." The State has no opportunity to test his guilt or innocence by a trial on the merits or to

secure his punishment if he is guilty. The protection afforded by Rev. Stats. 753 is, moreover, not confined to *revenue* officers or to officers of Federal Courts. It extends to "all persons" in custody for acts done or omitted in pursuance of a law of the United States.

For these reasons the Federal courts are naturally reluctant to grant relief by *habeas corpus* under Rev. Stats. 753, since such relief operates as a final bar to prosecution and precludes the State from all remedy.

Drury v. Lewis, 200 U. S. 1.

Baker v. Grice, 169 U. S. 284.

Ex parte Royall, 117 U. S. 241.

In removal cases, on the other hand, the same reasoning does not apply. Where a revenue officer is removed for trial under Section 33 of the Judicial Code, he is not released from all ultimate liability. A trial on the merits is still possible. Only the court is changed. *Delaware v. Emerson*, 8 Fed. 411. The State may still prosecute him, imprison him, and, if need be, even hang him, through the agency of the Federal Court.

Removal, in other words, possesses none of the attributes of *finality* which are involved in a discharge on *habeas corpus* under Rev. Stats. 753. And the statutes recognize that this is true. For discharge on *habeas corpus* the accused must prove facts which clearly demonstrate his practical innocence. For removal he need only make a "claim"

of Federal authority. *Tennessee v. Davis, supra.* For discharge on *habeas corpus*, he must show that he was in fact acting in pursuance of law. For removal, he need only show a "color" of authority under the law.

It is submitted that under this reasoning the accused officers have established a claim which warranted the court in ordering their removal and in denying the motion to remand.

II

THE DECISION OF THE DISTRICT COURT GRANTING THE PETITION FOR REMOVAL, AND DENYING THE MOTION TO REMAND, WAS AN EXERCISE OF LAWFUL JUDICIAL DISCRETION, AND CAN NOT BE CONTROLLED BY MANDAMUS.

This question also has been treated at length in the respondents' brief in Case A (Original No. 23), at pages 27-34.

In the case at bar, however, certain additional points must be noticed. The petition of the accused officers for removal included, of course, full allegations of the facts upon which the right to removal was based—allegations, for example, that the petitioners were Federal officers, that they were engaged in the performance of these duties (the duties being set forth in detail), and that the prosecution had been brought against them for acts alleged to have been done while they were so engaged. *The motion to remand, interposed by the State of Maryland, directly traversed these allegations.* Among the grounds assigned for that motion were these

(Exhibit A to Petition for mandamus, at pp. 39-41):

(1) Because the allegations of the second paragraph of the amended petition are untrue. (This paragraph contained a description of the official capacity of the agents and of Trabing, the chauffeur.)

(3) Because the allegations set forth in said petition are contradictory, evasive, founded on hearsay, and *in part untrue*.

(9) And for other good and sufficient reasons to be shown at the hearing.

It is very clear, therefore, that by the petition for removal, and by the motion of the State to remand, issues both of law and fact (or issues of mixed law and fact) were raised. The allegations of the petition for removal are to be taken to be *prima facie* true. *Carlisle v. Sunset Telephone Co.*, 116 Fed. 896. When their truth is directly challenged by the party who seeks to block removal, it becomes the duty of the District Court to determine the issue as to their truth. *Stone v. South Carolina*, 117 U. S. 430, 432.

It is submitted that the District Court, in deciding these issues, acted within the bounds of its lawful discretion. The petition of the accused officers for removal was duly verified under oath and was signed by all five of the petitioners. The District Court was entitled to treat that petition, so verified, as *evidence* of the facts therein contained. If it had chosen to *disbelieve* that evidence as untrue or fraudulent, and had remanded the cause to the

State court, the accused officers would have had no remedy to compel the District Court to alter its decision. Least of all would they have had a remedy by mandamus. Their claim to such a remedy would be regarded as absurd.

It is submitted that the same rule applies where the District Court has decided to *believe* their testimony. The writ of mandamus can not be used to compel an inferior court to decide an issue of fact, or of mixed law and fact, in any particular way, otherwise than in accordance with the dictates of its own judgment.

United States v. Lawrence, Judge, 3 Dall. 42.

Ex parte Bradstreet, 8 Pet. 588.

Ex parte Taylor, 14 How. 2, 12.

Ex parte Secombe, 19 How. 9, 15.

Ex parte Newman, 14 Wall. 152.

Ex parte Cutting, 94 U. S. 14, 20.

Ex parte Roe, 234 U. S. 70, 73.

Ex parte Slater, 246 U. S. 129, 134.

Ex parte Chicago, Rock Island and Pacific Ry., 255 U. S. 273, 275.

The rule that the writ of mandamus can not be used to perform the office of an appeal or writ of error, or to review the discretion of an inferior court, applies *even to cases where no appeal or writ of error is given by law. In re Rice*, 155 U. S. 396, 403.

If the question involved is one of jurisdiction, the writ of mandamus will lie only where there is

no shadow of jurisdiction in the court below. If the jurisdiction of that court is doubtful, the remedy by mandamus will be refused.

In re Cooper, 143 U. S. 472, 506, 509.

Ex parte Muir, 254 U. S. 522.

And it is well settled that mandamus is not the proper remedy to control decisions of lower courts in *civil* removal cases.

Ex parte Harding, 219 U. S. 363.

Ex parte Hoard, 105 U. S. 578.

In none of the three cases where this Court has granted mandamus to remand *criminal* causes was the discretion of the lower court on issues of fact involved. In *Virginia v. Paul*, 148 U. S. 107, mandamus was granted solely on the ground that the attempt to remove was premature, since no "prosecution" was commenced until an indictment had been found. In *Virginia v. Rives*, 100 U. S. 313, and in *Kentucky v. Powers*, 201 U. S. 1, the lower courts had attempted to remove causes under Rev. Stats. 641 on the ground that the States concerned had denied the petitioners their equal rights. In both cases it was shown that the *States* had made no such denial, and that the denial involved was due to the acts of local officials unauthorized by law. In both cases the insufficiency of the petitions for removal, in point of *law*, was apparent on the face of the record. In neither case was there any issue of *fact* as to removal which the lower court could properly determine.

In the case at bar, it is submitted, the situation is clear. The District Court had before it certain issues of fact and law, or of mixed fact and law, which it alone could properly decide. Its decision on those issues can not properly be reversed by a writ of mandamus.

In *Tennessee v. Davis*, 100 U. S. 257, 261, this Court pointed out:

But the act of Congress authorizes the removal of any cause, when the acts of the defendant complained of were done, *or claimed to have been done*, in the discharge of his duty as a Federal officer. *It makes such a claim a basis for the assumption of Federal jurisdiction of the case, and for retaining it, at least until the claim proves unfounded.*

It is submitted that the accused officers in this case have made out such a *claim*. Upon the conflicting evidence before it, the District Court has determined that the claim appears to be well founded. If the claim should later appear to be unfounded, it is presumed that the District Court will proceed no further. But upon the record before this Court it is submitted that there can be no ground for extraordinary remedies. The District Court has decided in accordance with the dictates of its judgment upon questions both of law and of fact. Its discretion should not now be reviewed by mandamus.

CONCLUSION

It is therefore respectfully submitted that the rule should be discharged and that the petition for a writ of mandamus should be denied.

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